

Exhibit "E" to the Affidavit of Elizabeth Creary,  
sworn before me this 7<sup>th</sup> day of June, 2012.



Commissioner for Taking Affidavits

Michael Colin Anderson,  
a Commissioner, etc., Province of  
Ontario, while a Student-at-Law.  
Expires May 8, 2015

Paul S. Aronzon (*pro hac vice* pending)  
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*Proposed Counsel to Debtors and Debtors in Possession*

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

In re:	)	
	)	Chapter 11
LIGHTSQUARED INC., <i>et al.</i> ,	)	
	)	Case No. 12-_____ ( )
Debtors. <sup>1</sup>	)	Joint Administration Requested
	)	

**DEBTORS' MOTION FOR ENTRY OF ORDER DETERMINING  
ADEQUATE ASSURANCE OF PAYMENT FOR FUTURE UTILITY SERVICES**

LightSquared Inc. and certain of its affiliates, as debtors and debtors in possession (collectively, "LightSquared" or the "Debtors") in the above-captioned chapter 11 cases (the "Chapter 11 Cases"), file this motion (the "Motion") for entry of an order (the "Order") determining adequate assurance of payment for future utility services. In support of this Motion, the Debtors submit the Declaration of Marc R. Montagner, Chief Financial Officer and Interim Co-Chief Operating Officer of LightSquared Inc., (A) in Support of First Day Pleadings and (B)

<sup>1</sup> The debtors in these chapter 11 cases, along with the last four digits of each debtor's federal or foreign tax or registration identification number, are: LightSquared Inc. (8845), LightSquared Investors Holdings Inc. (0984), One Dot Four Corp. (8806), One Dot Six Corp. (8763), SkyTerra Rollup LLC (N/A), SkyTerra Rollup Sub LLC (N/A), SkyTerra Investors LLC (N/A), TMI Communications Delaware, Limited Partnership (4456), LightSquared GP Inc. (6190), LightSquared LP (3801), ATC Technologies, LLC (3432), LightSquared Corp. (1361), LightSquared Finance Co. (6962), LightSquared Network LLC (1750), LightSquared Inc. of Virginia (9725), LightSquared Subsidiary LLC (9821), Lightsquared Bermuda Ltd. (7247), SkyTerra Holdings (Canada) Inc. (0631), SkyTerra (Canada) Inc. (0629) and One Dot Six TVCC Corp. (0040). The location of the debtors' corporate headquarters is 450 Park Avenue, Suite 2201, New York, NY 10022.



Pursuant to Rule 1007-2 of Local Bankruptcy Rules for United States Bankruptcy Court for Southern District of New York (the “Montagner Declaration”). In further support of this Motion, the Debtors respectfully state as follows:

### **Jurisdiction**

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).
2. Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The statutory basis for the relief requested herein is section 366 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as amended, the “Bankruptcy Code”).

### **Background**

#### **A. Introduction**

4. On May 14, 2012 (the “Petition Date”), each of the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code.
5. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Debtors have requested the joint administration of these Chapter 11 Cases for procedural purposes. No trustee, examiner or statutory committee of unsecured creditors has been appointed in these Chapter 11 Cases.

#### **B. Overview of Debtors’ Businesses**

##### *(i) Debtors’ Satellite Business*

6. LightSquared, a mobile communications company with headquarters in New York and incorporated in Delaware in 1985, is the first private company to offer mobile

satellite services throughout North America, initially using two geostationary satellites<sup>2</sup> as well as a portion of the electromagnetic spectrum known as the L-Band. Since its first satellite became operational in 1996, LightSquared has provided satellite communications services – which include data, voice, fax and dispatch services – to companies and federal, state, provincial, local and foreign governments that are wholesale purchasers of bandwidth power and capacity, resellers of telephony, data and dispatch services and retail voice users. For example, LightSquared provides services to public safety officers, emergency responders and the United States military. Today, LightSquared's mobile satellite business generates approximately \$30 million in annual revenue and provides service to approximately 300,000 end users.

7. LightSquared launched SkyTerra-1 in November 2010, which, as mentioned above, is one of two next-generation satellites that have been constructed by LightSquared. LightSquared's next-generation satellites are two of the most powerful mobile satellites ever constructed. Each is equipped with a 22 meter (75 foot) diameter antenna which provides ten (10) times better performance than that provided by LightSquared's prior satellites. The satellites have the capability of forming up to five hundred (500) beams over North America and can operate with devices that are as small as standard cell phones or USB modems. The SkyTerra-1 and SkyTerra-2 satellite networks utilize state-of-the art ground-based beam forming systems. Such systems allow flexibility in beam shapes, number, bandwidth allocation and beam

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<sup>2</sup> These two first-generation satellites, known as MSAT-1 and MSAT-2, currently provide services to some existing customers, and have also, since March 10, 2012, provided emergency back-up service to all of LightSquared's customers due to a solar flare(s), which temporarily disabled the SkyTerra-1 satellite, one of LightSquared's two next-generation satellites. LightSquared is currently finalizing the assessment of the solar flare(s) prior to transitioning customers back to that satellite for service. LightSquared will also rely upon the MSAT system until such time that SkyTerra-2, LightSquared's second next-generation satellite, is launched. Both MSAT-1 and MSAT-2 are approaching the ends of their useful lives and are part of the Prepetition LP Collateral (as defined below). They have, in the past, experienced anomalies and Solid State Power Amplifier failures and neither currently operates at full capacity.



power allocation, which is unprecedented in prior mobile satellite systems. SkyTerra-1 is fully operational, and SkyTerra-2 is constructed and stored in preparation for launch.

8. LightSquared currently operates three (3) lines of business, including Mobile Satellite Communications (“MSAT”), Mobile Data Services (“MDS”) and Private Network Carriers (“PNC”) through a wholesale business model whereby its partners bill the end users, and LightSquared bills its partners at a wholesale rate. Through these three lines of business, LightSquared has over fifteen wholesale partners, including, but not limited to, Comtech Mobile Datacom Corporation, XATA Corporation, SkyBitz, Outerlink, Omnistar, Wireless Matrix, EMS Technologies/Honeywell, Network Innovations, Glentel, Astrum, Infosat, Inmosat and International Satellite Service, that collectively support approximately 300,000 subscribers across several markets throughout North America.

9. MSAT Business. LightSquared’s MSAT business provides circuit-switched voice, low data rate services and push-to-talk (“PTT”) services, which are sold through LightSquared’s authorized wholesale service providers and are utilized by a variety of governmental agencies at the federal, state and local level, as well as by various markets in the enterprise space. LightSquared is currently the only commercial satellite operator in North America offering PTT service. LightSquared’s two-way, PTT radio service over satellite is a popular option for communications in remote areas or during emergency situations, and its dispatch or two-way radio style is familiar to the public safety community and ideal for command and control. Thus, in the public/government sector, LightSquared’s MSAT business serves end users in public safety, emergency management and defense as well as health and education.

10. Specifically, LightSquared’s PTT products and services were utilized by public safety and education (such as the University of North Carolina Wilmington) end users

during, and in preparation for, several disasters, including Hurricane Katrina (Mississippi Department of Wildlife, Fisheries and Parks), Hurricane Gustav (several federal, state and local agencies), Hurricane Irene (DE State Police, MD Emergency Management Agency), Kentucky Ice Storms (Kentucky Department for Public Health) and, most recently, the tornadoes in Kentucky (Kentucky Department for Public Health). In all of these disasters, LightSquared's mobile satellite service, with its PTT capability, provided instant communications for public safety agencies and a means for interoperability among disparate agencies.

11. Moreover, in recent years, the United States has faced a variety of costly natural and man-made disasters, including hurricanes, tornadoes, wildfires, flooding and earthquakes, as well as the 9/11 terrorist attacks, which have amplified the need for dependable communications that enable organizations to communicate with each other. Often, the only means available to the public safety/emergency responder community to do so is through mobile satellite communications. To address these needs, federal, state and local agencies have voluntarily banded together with LightSquared in a public-private partnership to create the Satellite Mutual Aid Radio Talkgroup ("SMART") program -- enabling nationwide and regional interoperability at no additional cost to LightSquared users. Since SMART is a feature provided at no cost to LightSquared's public safety end users, the SMART program, incorporating such SMART feature, is a cost-efficient program that delivers measurable return on investment -- swift and reliable communications interoperability for emergency response and contingency operations. With the rapid growth of SMART, public safety and emergency responders have a resource that enables communications interoperability that is immediate, reliable and always available.

12. It is thus no surprise that the nationwide and regional SMART end users include, among others, (a) JSMART, utilized by public safety agencies across the country and

managed by the DOJ Wireless Management, (b) LSMART, utilized nationally by law enforcement and managed by the U.S. Marshals Service, (c) USMART, utilized by urban search and rescue teams across the United States and managed by the Montgomery County, Maryland Fire & Rescue Service, (d) NE SMART, utilized by the northeast states and managed by the Connecticut State Police, (e) WSMART, utilized by the western states and managed by the California Emergency Management Agency and (f) MWSMART, utilized by the midwest states and managed by the Indiana Department of Homeland Security.

13. The MSAT line of business also serves various markets in the enterprise space, including maritime, oil and gas, utilities, transportation, media and recreation. In the maritime vertical market, especially in Alaska, fishermen rely on LightSquared's PTT capability while at sea in extreme environments, especially north of 60° toward the Aleutians. Additionally, enterprise users in the oil and gas industry rely on LightSquared's mobile satellite service in the Gulf region to communicate with workboats and on oil rigs/platforms for instantaneous communication between rigs/boats and back to operations centers on the coast.

14. MDS Business. LightSquared's second line of business, MDS, is a low data rate service offering used primarily for applications such as fleet and load management, email, vehicle tracking, two-way messaging and broadcast messaging. Like LightSquared's MSAT services, MDS is sold through LightSquared's authorized wholesale service providers and is utilized by various end users. One such end user, the New Mexico State Police, utilizes MDS in police cruisers to enable officers to perform database lookups on ruggedized laptops in remote areas where no terrestrial communications exist and LightSquared's satellite service is the only means by which to meet this critical data communications requirement in an effective manner.

15. PNC Business. Finally, LightSquared's third line of business, PNC, enables customers to lease bandwidth from LightSquared over which they offer custom satellite data solutions (typically, asset tracking services for truck and rail) to a wide variety of end users. In connection therewith, LightSquared's PNC customers are responsible for developing a custom air interface, providing hub, end-user equipment and servicing end users. One of LightSquared's largest PNC customers, SkyBitz, provides asset tracking services through LightSquared's satellite capacity for Tri State Motor Transit Co., an end user that hauls high-risk cargo such as munitions, explosives and nuclear fuel bound for sites from coast to coast. LightSquared's satellite capacity ensures that trailers hauling this cargo are constantly tracked where terrestrial communications do not exist. Another PNC customer, Comtech Mobile Datacom Corp., provides service to the United States military, utilizing LightSquared's service in North America in connection with the Blue Force Tracking system that tracks all military assets.

(ii) *Debtors' Terrestrial Component of Satellite Business*

16. In the late 1990s, LightSquared determined that adding a terrestrial (*i.e.*, land-based) component to its satellite system would optimize the use of the L-Band and provide a communications system with superior reliability and coverage. By combining a nationwide system of terrestrial base stations with one of the largest commercial satellites ever launched – the state-of-the-art SkyTerra-1 – LightSquared could offer coverage of a satellite system in North America and the capacity of a next-generation, high-speed wireless broadband network.

17. LightSquared determined that a significant market opportunity was created for a wholesale-only, 4th Generation Long Term Evolution (“4G LTE”) wireless broadband network due to, among other things, (a) the proliferation of new mobile devices, such as smartphones and tablets, which accelerated demand for ubiquitous, on-the-go data-rich Internet

services, (b) limited wireless network capacity available to support increased data usage and (c) substantial costs and barriers to entry preventing smaller carriers and new operators from deploying nationwide 4G LTE networks. LightSquared believed that many wireless operators would face significant challenges meeting network demands due to spectrum availability and capital shortages because the wireless communications industry was (and currently remains) dominated by a small number of established, national wireless carriers and current levels of data transmission already utilized significant network capacity. This led LightSquared to conclude that some carriers would be unable to deploy their own 4G LTE networks in a timely and cost-effective manner, while others would be unable to install enough capacity to serve the needs of their existing customer bases, thereby resulting in such carriers being unable to offer comparable service quality and speeds on a cost-competitive basis with the largest national carriers. To address this imbalance, LightSquared's strategy was, and currently remains, to enable a broad range of potential wholesale customers to launch competitive retail wireless service offerings using wholesale capacity on LightSquared's 4G LTE network.

18. Accordingly, LightSquared initiated the process of building the only 4G LTE open wireless broadband network that incorporates both terrestrial (*i.e.*, land-based) and satellite coverage throughout North America and offers people the speed, value and reliability of universal connectivity, wherever they may be located. The satellite component of the system would provide service to the population in areas not otherwise covered by terrestrial systems. Through its wholesale-only business model, entities without their own wireless network, or that have limited geographic coverage or spectrum, will be able to market and sell their own devices, applications and services using the LightSquared network at a competitive price and without retail competition from LightSquared. This, in turn, will enable manufacturers and retailers to

provide a solution for consumers, while creating new customer relationships and ongoing revenue streams for themselves. LightSquared's partners will also be able to develop their own devices, applications and services on the LightSquared network because it is a completely open network system.

19. As of the Petition Date, the Debtors employed approximately 168 people in the United States and Canada. As of February 29, 2012, the Debtors had approximately \$4.48 billion in assets (book value) and \$2.29 billion in liabilities.

**C. Additional Information**

20. Additional information regarding the Debtors' businesses, assets, capital structure and the circumstances leading to the filing of these Chapter 11 Cases is set forth in the Montagner Declaration, which was filed contemporaneously herewith.

**The Debtors' Utilities**

**A. Debtors' Utility Providers**

21. The Debtors incur utility expenses for electricity and gas services in the ordinary course of their businesses. Two (2) utility providers (collectively, the "Utility Providers") provide these services through two (2) accounts. A list of the Utility Providers rendering services to the Debtors as of the Petition Date is attached hereto as Exhibit A (the "Utility Service List"). On average, the Debtors spent, in the aggregate, approximately \$43,700 per month on utility costs through the Utility Providers over the past twelve (12) months. As of the Petition Date, the Debtors estimate that approximately \$50,000 in utility costs may be outstanding.

22. Preserving utility services on an uninterrupted basis is essential to the Debtors' ongoing operations and, therefore, to the success of their reorganization. Indeed, any interruption in utility services, even for a brief period of time, would disrupt the Debtors' ability

to continue operations and service their customers. This disruption would adversely impact customer relationships and result in a decline in the Debtors' revenues and profits. Such a result could seriously jeopardize the Debtors' reorganization efforts and, ultimately, their value and creditor recoveries. It is, therefore, critical that utility services continue uninterrupted during these Chapter 11 Cases.

**B. Proposed Adequate Assurance**

23. The Debtors intend to pay postpetition obligations owed to the Utility Providers in a timely manner. The Debtors expect that cash reserves and cash flows from operations will be sufficient to pay postpetition obligations related to their utility services.

24. Furthermore, the Debtors propose to deposit \$21,850 (the "Adequate Assurance Deposit") into a newly-created, segregated, interest-bearing bank account (the "Adequate Assurance Account"), which amount represents a sum equal to two (2) weeks' worth of the estimated aggregate annual amount of utility services provided by all of the Utility Providers set forth on the Utility Service List, based on the Debtors' average usage for the prior year.

25. The Debtors submit that the Adequate Assurance Deposit, in conjunction with the Debtors' cash position, (a) demonstrates the Debtors' ability to pay for future utility services in the ordinary course of business (the "Proposed Adequate Assurance") and (b) constitutes adequate assurance to the Utility Providers.

**C. Proposed Adequate Assurance Procedures**

26. Notwithstanding the Proposed Adequate Assurance, if any Utility Provider believes that additional adequate assurance is required, it may request such assurance pursuant to the procedures described below (the "Adequate Assurance Procedures"):

- (a) The Debtors will deposit the Adequate Assurance Deposit in the Adequate Assurance Account within five (5) business days of entry of the Order; provided, however, that to the extent any Utility Provider receives any value from the Debtors as adequate assurance of payment, the Debtors may reduce the Adequate Assurance Deposit maintained in the Adequate Assurance Account by such amount.
- (b) The portion of the Adequate Assurance Deposit attributable to each Utility Provider shall be returned to the Debtors on the earlier of (i) the Debtors' termination of services from such Utility Provider or (ii) the effective date of a chapter 11 plan for the Debtors, if not applied earlier.
- (c) Any Utility Provider desiring additional assurances of payment in the form of deposits, prepayments or otherwise must serve a request for additional assurance (an "Additional Assurance Request") so that it is received by the following parties:
  - (i) LightSquared Inc., 450 Park Avenue, Suite 2201, New York, NY 10022, Attn: Marc R. Montagner and Curtis Lu, Esq.
  - (ii) proposed counsel to the Debtors, Milbank, Tweed, Hadley & McCloy LLP, One Chase Manhattan Plaza, New York, NY 10005, Attn: Matthew S. Barr, Esq. and Karen Gartenberg, Esq. and
  - (iii) the Office of the United States Trustee for the Southern District of New York (the "U.S. Trustee"), 33 Whitehall Street, 21st Floor, New York, NY 10004 (collectively, the "Notice Parties").
- (d) Any Additional Assurance Request must (i) be made in writing, (ii) set forth the location for which utility services are provided, (iii) include a summary of the Debtors' payment history relevant to the affected account(s), including any security deposits, and (iv) set forth why the Utility Provider believes that the Proposed Adequate Assurance is not sufficient adequate assurance of future payment.
- (e) Any Additional Assurance Request must be made and *actually received* by all of the Notice Parties listed above by no later than twenty-one (21) days after entry by this Court of the Order approving this Motion. If a Utility Provider fails to file and serve a timely Additional Assurance Request, it shall be: (i) forbidden to discontinue, alter or refuse service to, or discriminate against, the Debtors on account of any unpaid prepetition charges, or require additional assurance of payment other than the two (2)-week Proposed Adequate Assurance and (ii) deemed to have received adequate assurance of payment in compliance with section 366 of the Bankruptcy Code.



- (f) Upon the Debtors' receipt of any Additional Assurance Request at the addresses set forth above, the Debtors shall have the greater of (i) twenty (20) days from the receipt of such Additional Assurance Request or (ii) thirty (30) days from the Petition Date (collectively, the "Resolution Period") to negotiate with such Utility Provider to resolve such Utility Provider's Additional Assurance Request.
- (g) The Debtors may, in their sole discretion, resolve any Additional Assurance Request by mutual agreement with the Utility Provider and without further order of the Court, and may, in connection with any such agreement, in their sole discretion, provide a Utility Provider with additional adequate assurance of future payment, including, but not limited to, cash deposits, prepayments or other forms of security, without further order of the Court if the Debtors believe that such additional assurance is reasonable.
- (h) If the Debtors determine that the Additional Assurance Request is not reasonable and are not able to reach an alternative resolution with the Utility Provider during the Resolution Period, the Debtors, during or immediately after the Resolution Period, will request a hearing before the Court to determine the adequacy of assurances of payment with respect to a particular Utility Provider (the "Determination Hearing") pursuant to section 366(c)(3) of the Bankruptcy Code.
- (i) Pending resolution of such dispute at the Determination Hearing, the relevant Utility Provider shall be prohibited from discontinuing, altering or refusing service to the Debtors on account of unpaid charges for prepetition services or on account of any objections to the Proposed Adequate Assurance.
- (j) The Debtors will fax, e-mail, serve by first class mail or otherwise expeditiously send a copy of this Motion and the Order, which includes the proposed Adequate Assurance Procedures, to each Utility Provider within three (3) business days after entry of the Order by the Court.

27. The Debtors request that all Utility Providers that do not timely file an objection to this Motion or make an Additional Assurance Request pursuant to the Adequate Assurance Procedures be deemed to consent to the Proposed Adequate Assurance and be bound by any order entered by this Court granting this Motion.

**D. Subsequent Modifications**

28. The Debtors have made an extensive and good-faith effort to identify their Utility Providers and include them on the Utility Service List. Nonetheless, to the extent that the Debtors subsequently identify additional Utility Providers, the Debtors respectfully request authority, in their sole discretion, to amend the Utility Service List to add or remove any Utility Provider. The Debtors further request that the Order be deemed to apply to any such subsequently identified Utility Provider regardless of when each Utility Provider is added to the Utility Service List. The Debtors will serve a copy of this Motion to any Utility Provider that is subsequently added to the Utility Service List. Subsequently added Utility Providers shall have twenty (20) days from the date of service of the Order to file an objection to this Motion and/or serve an Adequate Assurance Request on the Notice Parties.

29. Such subsequently added Utility Providers who object to the entry of the Order must file an objection in accordance with the Bankruptcy Rules, the Local Bankruptcy Rules for the Southern District of New York (the "Local Rules") and the Adequate Assurance Procedures.

**Relief Requested**

30. By this Motion, the Debtors respectfully request entry of the Order, pursuant to section 366 of the Bankruptcy Code, (a) determining that the Utility Providers have been provided with adequate assurance of payment within the meaning of section 366 of the Bankruptcy Code by virtue of the Proposed Adequate Assurance, (b) approving the Adequate Assurance Procedures as proposed herein, (c) prohibiting the Utility Providers from altering, refusing or discontinuing utility services on account of prepetition amounts outstanding and on account of any perceived inadequacy of the Adequate Assurance Procedures and (d) determining

that the Debtors are not required to provide any additional adequate assurance beyond what is proposed in this Motion.

**Basis for Relief**

31. Congress enacted section 366 of the Bankruptcy Code to protect debtors from utility service cutoffs upon a bankruptcy filing while providing utility companies with adequate assurance that the debtors will pay for postpetition services. See H.R. Rep. No. 95-595, at 350 (1978), reprinted in 1978 U.S.C.C.A.N. 5963, 6306. Section 366 of the Bankruptcy Code protects debtors by prohibiting utilities from altering, refusing or discontinuing services to a debtor solely on account of unpaid prepetition amounts for a period of thirty (30) days after a chapter 11 filing. At the same time, it protects utilities by permitting them to alter, refuse or discontinue service after thirty (30) days if the debtor has not furnished “adequate assurance” of payment in a form “satisfactory” to the utility. 11 U.S.C. § 366(c)(2).

32. As revised by the Bankruptcy Abuse Prevention and Consumer Protection Act (“BAPCPA”), section 366(c)(3)(B) of the Bankruptcy Code restricts the factors that a court can consider when determining whether an adequate assurance payment is, in fact, adequate. Specifically, courts may no longer consider (a) the absence of a security deposit before a debtor’s petition date, (b) a debtor’s history of timely payments or (c) the availability of an administrative expense priority when determining the amount of a deposit. Notwithstanding these changes, it does not appear that Congress intended to, or did, abrogate the bankruptcy court’s ability to determine the amount of adequate assurance necessary or change the fundamental requirement that assurance of payment must simply be “adequate.”

33. It is well established that section 366(b) of the Bankruptcy Code permits the Court to find that no adequate assurance payment at all is necessary to provide a utility with adequate assurance of payment. See Va. Elec. & Power Co. v. Caldor, Inc.-NY, 117 F.3d 646,

650 (2d Cir. 1997) (“Even assuming that ‘other security’ should be interpreted narrowly . . . a bankruptcy court’s authority to ‘modify’ the level of the ‘deposit or other security’ provided for under § 366(b), includes the power to require ‘no deposit or other security’ where none is necessary to provide a utility supplier with ‘adequate assurance of payment.’”). This principle may be applicable in cases where the debtor has made prepetition deposits or prepayments for services that utilities will ultimately render postpetition. See 11 U.S.C. § 366(c)(1)(A)(v) (recognizing a prepayment for postpetition services as adequate assurance). Accordingly, even after the revisions to section 366 of the Bankruptcy Code, courts continue to have discretion to determine the amount of adequate assurance payments and, where appropriate, to determine that no such payment is necessary.

34. In addition, section 366(c) of the Bankruptcy Code, like section 366(b), requires only that a utility’s assurance of payment be “adequate.” Courts recognize that adequate assurance of performance does not constitute an absolute guarantee of a debtor’s ability to pay. See, e.g., Long Island Lighting Co. v. The Great Atl. & Pac. Tea Co., Inc. (In re The Great Atl. & Pac. Tea Co., Inc.), No. 11-CV-1338, 2011 WL 5546954, at \*5 (S.D.N.Y. Nov. 14, 2011) (in determining what constitutes adequate assurance of payment for continuing utility services, courts “are not required to give the equivalent of a guaranty of payment in full”) (citation omitted); Steinebach v. Tucson Elec. Power Co. (In re Steinebach), 303 B.R. 634, 641 (Bankr. D. Ariz. 2004) (“Adequate assurance of payment is not, however, absolute assurance . . . ‘a Bankruptcy Court is not required to give a utility company the equivalent of a guarantee of payment, but must only determine that the utility is not subject to any unreasonable risk of non-payment for postpetition services.’”) (quoting In re Adelphia Bus. Solutions, Inc., 280 B.R. 63, 80 (Bankr. S.D.N.Y. 2002)); see also In re Caldor, Inc.-NY, 199 B.R. 1, 3 (S.D.N.Y. 1996)

(section 366(b) “does not require an ‘absolute guarantee of payment’”) (citation omitted), aff’d sub nom. Va. Elec. & Power Co., 117 F.3d at 646.

35. Courts have also recognized that, in determining the requisite level of adequate assurance, bankruptcy courts should “focus upon the need of the utility for assurance, and to require that the debtor supply *no more than that*, since the debtor almost perforce has a conflicting need to conserve scarce financial resources.” Va. Elec. & Power Co., 117 F.2d at 650 (emphasis in original); see also In re Penn Cent. Transp. Co., 467 F.2d 100, 103-04 (3d Cir. 1972) (affirming bankruptcy court’s ruling that no utility deposits were necessary where such deposits would likely “jeopardize the continuing operation of the [debtor] merely to give further security to suppliers who already are reasonably protected”); The Great Atl. & Pac. Tea Co., Inc., 2011 WL 5546954, at \*5-6 (no additional adequate assurance deposit was necessary where such deposit would impose an unreasonable burden on reorganizing debtors). Accordingly, demands by a Utility Provider for a guarantee of payment should be refused when the Debtors’ specific circumstances already afford adequate assurance of payment.

36. The Debtors believe that most, if not all, of their Utility Providers have adequate assurance of payment even without the Adequate Assurance Deposit. Contemporaneously herewith, the Debtors are seeking authorization to use cash collateral that will enable them to pay their operating costs, including utility costs, as they come due. The Debtors anticipate having sufficient resources to pay, and intend to pay, all valid postpetition obligations for utility services in a timely manner, particularly considering that the aggregate amount of the Debtors’ utility obligations is not overwhelming. Moreover, the Debtors have consistently made timely payments to all Utility Providers and intend to continue such practice. In addition, the Debtors’ reliance on utility services for the operation of their businesses provides

them with a powerful incentive to stay current on their utility obligations. These factors, which the Court may (and should) consider when determining the amount of any adequate assurance payments, justify a finding that no adequate assurance payments are required in these Chapter 11 Cases. Indeed, the Debtors respectfully submit that the Proposed Adequate Assurance is more than sufficient to assure the Utility Providers of future payment.

37. Notwithstanding the foregoing, the Debtors believe that the Proposed Adequate Assurance and the Adequate Assurance Procedures are reasonable, satisfy the requirements of section 366 of the Bankruptcy Code and are necessary for the Debtors to carry out their reorganization efforts. If they are not approved, the Debtors could be forced to address numerous payment requests by their Utility Providers in a disorganized manner at a critical point in their reorganization. Moreover, on the thirtieth (30th) day following the Petition Date, the Debtors could be surprised by a Utility Provider unilaterally (a) deciding that it is not adequately protected, (b) discontinuing service or (c) making an exorbitant demand for payment to continue service. Such discontinuation of utility service could put the Debtors' reorganization efforts in jeopardy.

38. In other large chapter 11 cases, courts in this district have regularly granted relief similar to that requested herein. See, e.g., In re AMR Corp., Case No. 11-15463 (SHL) (Bankr. S.D.N.Y. Dec. 23, 2011) [Docket No. 457] (approving a cash deposit equal to two weeks of utility services, calculated based on the historical average over the past 12 months); In re Borders Group, Inc., Case No. 11-10614 (MG) (Bankr. S.D.N.Y. Apr. 7, 2011) [Docket No. 570] (same); In re Uno Rest. Holdings Corp., Case No. 10-10209 (MG) (Bankr. S.D.N.Y. Mar. 10, 2010) [Docket No. 357] (same); In re ION Media Networks, Inc., Case No. 09-13125 (JMP)

(Bankr. S.D.N.Y. June 25, 2009) [Docket No. 103] (same); In re DBSD N. Am. Inc., Case No. 09-13061 (REG) (Bankr. S.D.N.Y. June 5, 2009) [Docket No. 86] (same).

**Reservation of Rights**

39. To the extent that any contract or agreement in connection with any Utility Provider is deemed an executory contract within the meaning of section 365 of the Bankruptcy Code, the Debtors do not at this time intend to assume such contract or agreement. As such, the Court's authorization of payment shall not be deemed to constitute an assumption of such contract or agreement pursuant to section 365 of the Bankruptcy Code. The Debtors are currently in the process of reviewing all of their contracts and agreements and reserve all of their rights with respect thereto.

40. Additionally, nothing contained herein is intended or should be construed as (a) an agreement or admission by the Debtors as to the validity of any claim against their estates, (b) a waiver or impairment of the Debtors' right to dispute any claim on any grounds, (c) a promise by the Debtors to pay any claim or (d) an implication or admission by the Debtors that such claim is payable pursuant to an order granting the relief requested in this Motion.

**Waiver of Bankruptcy Rules 6004(a) and 6004(h)**

41. To implement the foregoing successfully, the Debtors respectfully request a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the fourteen (14)-day stay of an order authorizing the use, sale or lease of property under Bankruptcy Rule 6004(h). Pursuant to Bankruptcy Rule 6004(h), "[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise." Fed. R. Bankr. P. 6004(h). As set forth above, the payments proposed herein are essential to prevent potentially irreparable damage to the Debtors' operations, value and ability to reorganize. Accordingly, the Debtors submit that ample cause

exists to justify a waiver of the fourteen (14)-day stay imposed by Bankruptcy Rule 6004(h), to the extent it applies.

**Motion Practice**

42. This Motion includes citations to the applicable rules and statutory authorities upon which the relief requested herein is predicated, and a discussion of their application to this Motion. Accordingly, the Debtors submit that this Motion satisfies Local Rule 9013-1(a).

**Notice**

43. The Debtors have caused notice of this Motion to be provided by electronic mail, facsimile, regular or overnight mail and/or hand delivery to (a) the U.S. Trustee, (b) the entities listed on the Consolidated List of Creditors Holding the 20 Largest Unsecured Claims filed pursuant to Bankruptcy Rule 1007(d), (c) counsel to the agents for the Debtors' prepetition secured lenders, (d) counsel to the ad hoc secured group of Prepetition LP Lenders (as defined in the Montagner Declaration), (e) counsel to Harbinger Capital Partners, (f) the Internal Revenue Service, (g) the United States Attorney for the Southern District of New York, (h) the Federal Communications Commission, (i) Industry Canada and (j) the Utility Providers listed on Exhibit A. The Debtors respectfully submit that no other or further notice is required or necessary.

**No Previous Request**

44. No prior motion for the relief requested herein has been made by the Debtors to this or any other court.

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WHEREFORE, for the reasons set forth above and in the Montagner Declaration, the Debtors respectfully request that the Court (a) enter the Order, substantially in the form attached hereto as Exhibit B, granting the relief requested herein and (b) grant such other and further relief as the Court may deem just and proper.

New York, New York  
Dated: May 14, 2012

/s/ Matthew S. Barr  
Paul S. Aronzon (*pro hac vice* pending)  
Matthew S. Barr  
Steven Z. Szanzer  
Karen Gartenberg  
MILBANK TWEED HADLEY & McCLOY LLP  
One Chase Manhattan Plaza  
New York, NY 10005-1413  
(212) 530-5000

*Proposed Counsel to Debtors and Debtors in Possession*

**Exhibit A**

**Utility Service List**

**Utility Service List**

<b>Utility Provider</b>	<b>Address</b>	<b>Type of Service</b>
Enbridge Inc.	3000 Fifth Avenue Place 425 – 1st Street SW Calgary, Alberta T2P 3L8 CANADA	Natural Gas
Hydro Ottawa	3025 Albion Road North Ottawa, Ontario K1G 3S4 CANADA	Electricity

**Exhibit B**

**Proposed Order**

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

	)	
In re:	)	Chapter 11
	)	
LIGHTSQUARED INC., <i>et al.</i> ,	)	Case No. 12-_____ (___)
	)	
Debtors. <sup>1</sup>	)	Joint Administration Requested
	)	

**ORDER DETERMINING ADEQUATE  
ASSURANCE OF PAYMENT FOR FUTURE UTILITY SERVICES**

Upon the motion (the “Motion”)<sup>2</sup> of LightSquared Inc. and certain of its affiliates, as debtors and debtors in possession (collectively, the “Debtors”) in the above-captioned chapter 11 cases (the “Chapter 11 Cases”), for entry of an order (the “Order”), pursuant to section 366 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as amended, the “Bankruptcy Code”), determining adequate assurance of payment for future utility services; and upon the Montagner Declaration; and it appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and it appearing that this proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and it appearing that venue of this proceeding and the Motion in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and notice of the Motion appearing adequate and appropriate under the circumstances; and the Court having found that no other or further notice is needed or necessary; and the Court having reviewed the Motion and the Montagner Declaration

<sup>1</sup> The debtors in these chapter 11 cases, along with the last four digits of each debtor’s federal or foreign tax or registration identification number, are: LightSquared Inc. (8845), LightSquared Investors Holdings Inc. (0984), One Dot Four Corp. (8806), One Dot Six Corp. (8763), SkyTerra Rollup LLC (N/A), SkyTerra Rollup Sub LLC (N/A), SkyTerra Investors LLC (N/A), TMI Communications Delaware, Limited Partnership (4456), LightSquared GP Inc. (6190), LightSquared LP (3801), ATC Technologies, LLC (3432), LightSquared Corp. (1361), LightSquared Finance Co. (6962), LightSquared Network LLC (1750), LightSquared Inc. of Virginia (9725), LightSquared Subsidiary LLC (9821), Lightsquared Bermuda Ltd. (7247), SkyTerra Holdings (Canada) Inc. (0631), SkyTerra (Canada) Inc. (0629) and One Dot Six TVCC Corp. (0040). The location of the debtors’ corporate headquarters is 450 Park Avenue, Suite 2201, New York, NY 10022.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Motion or in the Montagner Declaration, as applicable.

and having heard statements in support of the Motion at a hearing held before the Court (the "Hearing"); and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and it appearing, and the Court having found, that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors and other parties in interest; and any objections to the relief requested in the Motion having been withdrawn or overruled on the merits; and after due deliberation and sufficient cause appearing therefor, it is hereby **ORDERED** that:

1. The Motion is granted to the extent set forth herein.
2. Absent compliance with the procedures set forth herein, the Debtors' Utility Providers are prohibited from altering, refusing or discontinuing service on account of any unpaid prepetition charges or the commencement of these Chapter 11 Cases.
3. As adequate assurance, the Debtors shall deposit \$21,850 (the "Adequate Assurance Deposit") into a newly-created, segregated, interest-bearing bank account (the "Adequate Assurance Account"). The Adequate Assurance Deposit, in conjunction with the Debtors' cash position, (a) demonstrate the Debtors' ability to pay for future utility services in the ordinary course of business (the "Proposed Adequate Assurance") and (b) constitute adequate assurance to the Utility Providers.
4. The Debtors' Utility Providers are prohibited from requiring additional adequate assurance of payment other than in accordance with the following procedures (the "Adequate Assurance Procedures"):
  - (a) The Debtors will deposit the Adequate Assurance Deposit in the Adequate Assurance Account within five (5) business days of entry of the Order; provided, however, that to the extent any Utility Provider receives any value from the Debtors as adequate assurance of payment, the Debtors may reduce the Adequate

Assurance Deposit maintained in the Adequate Assurance Account by such amount.

- (b) The portion of the Adequate Assurance Deposit attributable to each Utility Provider shall be returned to the Debtors on the earlier of (i) the Debtors' termination of services from such Utility Provider or (ii) the effective date of a chapter 11 plan for the Debtors, if not applied earlier.
- (c) Any Utility Provider desiring additional assurances of payment in the form of deposits, prepayments or otherwise must serve a request for additional assurance (an "Additional Assurance Request") so that it is received by the following parties:
  - (i) LightSquared Inc., 450 Park Avenue, Suite 2201, New York, NY 10022, Attn: Marc R. Montagner and Curtis Lu, Esq.,
  - (ii) proposed counsel to the Debtors, Milbank, Tweed, Hadley & McCloy LLP, One Chase Manhattan Plaza, New York, NY 10005, Attn: Matthew S. Barr, Esq. and Karen Gartenberg, Esq. and
  - (iii) the Office of the United States Trustee for the Southern District of New York (the "U.S. Trustee"), 33 Whitehall Street, 21st Floor, New York, NY 10004 (collectively, the "Notice Parties").
- (d) Any Additional Assurance Request must (i) be made in writing, (ii) set forth the location for which utility services are provided, (iii) include a summary of the Debtors' payment history relevant to the affected account(s), including any security deposits, and (iv) set forth why the Utility Provider believes that the Proposed Adequate Assurance is not sufficient adequate assurance of future payment.
- (e) Any Additional Assurance Request must be made and *actually received* by all the Notice Parties listed above by no later than twenty-one (21) days after entry by the Court of this Order. If a Utility Provider fails to file and serve a timely Additional Assurance Request, it shall be: (i) forbidden to discontinue, alter or refuse service to, or discriminate against, the Debtors on account of any unpaid prepetition charges, or require additional assurance of payment other than the two (2)-week Proposed Adequate Assurance and (ii) deemed to have received adequate assurance of payment in compliance with section 366 of the Bankruptcy Code.
- (f) Upon the Debtors' receipt of any Additional Assurance Request at the addresses set forth above, the Debtors shall have the greater of (i) twenty (20) days from the receipt of such Additional Assurance Request or (ii) thirty (30) days from the Petition Date (collectively,

the “Resolution Period”) to negotiate with such Utility Provider to resolve such Utility Provider’s Additional Assurance Request.

- (g) The Debtors may, in their sole discretion, resolve any Additional Assurance Request by mutual agreement with the Utility Provider and without further order of this Court, and may, in connection with any such agreement, in their discretion, provide a Utility Provider with additional adequate assurance of future payment, including, but not limited to, cash deposits, prepayments or other forms of security, without further order of this Court if the Debtors believe that such additional assurance is reasonable.
- (h) If the Debtors determine that the Additional Assurance Request is not reasonable and are not able to reach an alternative resolution with the Utility Provider during the Resolution Period, the Debtors, during or immediately after the Resolution Period, shall request a hearing before this Court to determine the adequacy of assurances of payment with respect to a particular Utility Provider (the “Determination Hearing”) pursuant to section 366(c)(3) of the Bankruptcy Code.
- (i) Pending resolution of such dispute at the Determination Hearing, the relevant Utility Provider shall be prohibited from discontinuing, altering or refusing service to the Debtors on account of unpaid charges for prepetition services or on account of any objections to the Proposed Adequate Assurance.
- (j) The Debtors will fax, e-mail, serve by first class mail or otherwise expeditiously send a copy of the Motion and this Order, which include the proposed Adequate Assurance Procedures, to each Utility Provider within three (3) business days after entry of this Order.

5. The Utility Providers have been provided with adequate assurance of payment within the meaning of section 366 of the Bankruptcy Code by virtue of the Proposed Adequate Assurance, (b) the Adequate Assurance Procedures as proposed are hereby approved, (c) the Utility Providers are prohibited from altering, refusing or discontinuing utility services on account of prepetition amounts outstanding and on account of any perceived inadequacy of the Adequate Assurance Procedures and (d) the Debtors are not required to provide any additional adequate assurance beyond what is stated in this Order.



6. A Utility Provider shall be deemed to have adequate assurance of payment within the meaning of section 366 of the Bankruptcy Code unless and until (a) the Debtors, in their sole discretion, agree to an alternative assurance of payment with the Utility Provider or (b) the Court enters an order requiring that additional adequate assurance of payment be provided.

7. Any Utility Provider that fails to timely file an objection or make an Adequate Assurance Request pursuant to the Adequate Assurance Procedures is deemed to consent to the Proposed Adequate Assurance and shall be bound by this Order.

8. The Debtors are authorized, in their sole discretion, to amend the Utility Service List to add or delete any Utility Provider, and the Order shall apply to any Utility Provider that is subsequently added to the Utility Service List, regardless of when each Utility Provider is added to the Utility Service List, in accordance with the following procedures:

- (a) For those Utility Providers that are subsequently added to the Utility Service List, the Debtors will serve a copy of the Order on the subsequently added Utility Provider. Subsequently added Utility Providers will then have twenty (20) days from service of the Order to file an objection to the Motion and/or serve an Adequate Assurance Request on the Notice Parties.
- (b) Such subsequently added Utility Providers who object to the entry of this Order must file an objection in accordance with the Bankruptcy Rules, the Local Rules and the Adequate Assurance Procedures.

9. Nothing in this Order or any action taken by the Debtors in furtherance of the implementation hereof shall be deemed to constitute an assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code, and the Debtors' rights with respect to such matters are expressly reserved.

10. Nothing in this Order nor the Debtors' payment of claims pursuant to this Order shall be construed as (a) an agreement or admission by the Debtors as to the validity of

any claim on any grounds, (b) a waiver or impairment of any Debtor's rights to contest the validity or amount of any claim against its estate, (c) a promise to pay any claim or (d) an implication or admission by the Debtors that such claim is payable pursuant to this Order.

11. The notice requirements of Bankruptcy Rules 6004(a) and 6004(h) are hereby waived, and the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

12. The Debtors are authorized and empowered to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

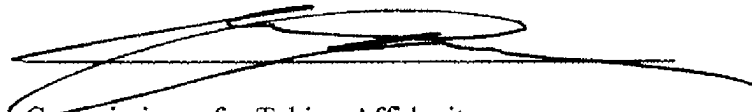
13. The requirements set forth in Local Rule 9013-1(a) are satisfied.

14. The Court retains jurisdiction with respect to all matters arising from or related to the implementation and interpretation of this Order.

New York, New York  
Dated: \_\_\_\_\_, 2012

\_\_\_\_\_  
UNITED STATES BANKRUPTCY JUDGE

Exhibit "F" to the Affidavit of Elizabeth Creary,  
sworn before me this 7<sup>th</sup> day of June, 2012.



Commissioner for Taking Affidavits

Michael Colin Anderson,  
a Commissioner, etc., Province of  
Ontario, while a Student-at-Law,  
Expires May 8, 2015

Paul S. Aronzon (*pro hac vice* pending)  
Matthew S. Barr  
Steven Z. Szanzer  
Karen Gartenberg  
MILBANK, TWEED, HADLEY & M<sup>C</sup>CLOY LLP  
One Chase Manhattan Plaza  
New York, NY 10005-1413  
(212) 530-5000

*Proposed Counsel to Debtors and Debtors in Possession*

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

In re:	)	
	)	Chapter 11
LIGHTSQUARED INC., <i>et al.</i> ,	)	
	)	Case No. 12-_____ (___)
Debtors. <sup>1</sup>	)	Joint Administration Requested
	)	

**MOTION OF DEBTORS FOR INTERIM AND FINAL ORDERS (A) AUTHORIZING  
DEBTORS TO USE CASH COLLATERAL, (B) GRANTING ADEQUATE  
PROTECTION TO PREPETITION SECURED PARTIES, (C) MODIFYING  
AUTOMATIC STAY AND (D) SCHEDULING INTERIM AND FINAL HEARINGS**

LightSquared Inc. and certain of its affiliates, as debtors and debtors in possession (collectively, "LightSquared" or the "Debtors") in the above-captioned chapter 11 cases (the "Chapter 11 Cases"), file this motion (the "Motion") for entry of an interim order (the "Interim Order") (a) authorizing the use of the Prepetition Secured Parties' (as defined below) Cash

<sup>1</sup> The debtors in these chapter 11 cases, along with the last four digits of each debtor's federal or foreign tax or registration identification number, are: LightSquared Inc. (8845), LightSquared Investors Holdings Inc. (0984), One Dot Four Corp. (8806), One Dot Six Corp. (8763), SkyTerra Rollup LLC (N/A), SkyTerra Rollup Sub LLC (N/A), SkyTerra Investors LLC (N/A), TMI Communications Delaware, Limited Partnership (4456), LightSquared GP Inc. (6190), LightSquared LP (3801), ATC Technologies, LLC (3432), LightSquared Corp. (1361), LightSquared Finance Co. (6962), LightSquared Network LLC (1750), LightSquared Inc. of Virginia (9725), LightSquared Subsidiary LLC (9821), Lightsquared Bermuda Ltd. (7247), SkyTerra Holdings (Canada) Inc. (0631), SkyTerra (Canada) Inc. (0629) and One Dot Six TVCC Corp. (0040). The location of the debtors' corporate headquarters is 450 Park Avenue, Suite 2201, New York, NY 10022.



Collateral,<sup>2</sup> (b) granting adequate protection to the Prepetition Secured Parties, (c) modifying the automatic stay and (d) pursuant to Rule 4001 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), scheduling a preliminary hearing (the “Interim Hearing”) to consider entry of the Interim Order granting the relief requested in the Motion and scheduling a final hearing (the “Final Hearing”) to consider entry of a final order (the “Final Order” and, together with the Interim Order, the “Cash Collateral Orders”) granting the relief requested in the Motion on a final basis. In support of this Motion, the Debtors submit the Declaration of Marc R. Montagner, Chief Financial Officer and Interim Co-Chief Operating Officer of LightSquared Inc., (A) in Support of First Day Pleadings and (B) Pursuant to Rule 1007-2 of Local Bankruptcy Rules for United States Bankruptcy Court for Southern District of New York (the “Montagner Declaration”). In further support of this Motion, the Debtors respectfully state as follows:

**Jurisdiction**

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).
2. Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The statutory bases for the relief requested herein are sections 105, 361, 362, 363(c) and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as amended, the “Bankruptcy Code”), Rules 2002, 4001 and 9014 and Rule 4001-2 of the Local Rules for the United States Bankruptcy Court for the Southern District of New York (the “Local Rules”).

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<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Interim Order or in the Montagner Declaration, as applicable.

**Summary of Relief Requested<sup>3</sup>**

4. Pursuant to Bankruptcy Rules 4001(b) and (d) and Local Rule 4001-2, the following is a concise statement and summary of the proposed material terms for the use of Cash Collateral:

<b><u>Prepetition Secured Parties</u></b>	The Prepetition Inc. Agent on behalf of the Prepetition Inc. Lenders under the Prepetition Inc. Credit Agreement, the Prepetition LP Agents on behalf of the Prepetition LP Lenders under the Prepetition LP Credit Agreement (each as defined in the Interim Order).
<b><u>Use of Cash Collateral</u></b>	Cash Collateral (as defined herein) shall be used for (a) working capital and other general corporate purposes, (b) permitted payment of costs of administration of the Chapter 11 Cases and (c) payment of such prepetition expenses as approved by this Court, in each case in accordance with the Budget attached as <u>Schedule 1</u> to the Interim Order.
<b><u>Termination Events</u></b>	The authorization to use Cash Collateral will terminate upon (a) entry of an order dismissing any of the Chapter 11 Cases of the Debtors with material assets or converting such Chapter 11 Cases to cases under chapter 7, (b) entry of an order appointing a chapter 11 trustee in any of the Chapter 11 Cases of the Debtors with material assets that is not stayed following entry or (c) entry of an order staying, reversing or vacating, in a manner materially adverse to the Prepetition Secured Parties and without prior consent of the Prepetition Secured Parties, the Interim Order or Final Order (each of the foregoing, a " <u>Termination Event</u> "). (Interim Order at ¶ 12.)
<b><u>Adequate Protection for Prepetition Secured Parties</u></b>	Each of the Prepetition Secured Parties is adequately protected by an equity cushion. As described in more detail in ¶ 31, however, the Debtors will provide the Prepetition Secured Parties with the following additional adequate protection, solely to the extent of any diminution in the value in their respective interests of the Cash Collateral: (a)(i) for LightSquared Inc., replacement liens on the Prepetition Inc. Collateral (as defined herein), subject to the Carve-Out (as defined herein), and (ii) for LightSquared LP, replacement liens on the Prepetition LP Collateral, subject to the Carve-Out; (b) superpriority claims as provided in section 507(b) of the Bankruptcy Code, subject to the Carve-Out and (c) reimbursement of all reasonable fees and expenses incurred or accrued by the Prepetition Agents under and pursuant to the Prepetition Inc. Credit Agreement and the Prepetition LP Credit Agreement, as applicable. (Interim Order at ¶¶ 5-7.) For avoidance of doubt, the Prepetition Secured Parties shall not have an Adequate Protection Lien (as defined herein) on any claims or causes of action under chapter 5 of the Bankruptcy Code or proceeds therefrom. (Interim Order at ¶ 5.)
<b><u>Carve-Out</u></b>	The " <u>Carve-Out</u> " shall mean, upon the occurrence of a Termination Event or as otherwise ordered by the Court (the " <u>Termination Date</u> "), the following expenses: (a) all statutory fees payable to the Clerk of the Court and to the U.S. Trustee pursuant to 28 U.S.C. §1930(a); (b) with respect to the information officer (the " <u>Information Officer</u> ") to be appointed by the Ontario Superior Court of Justice (Commercial List) in Toronto, Ontario, Canada (the " <u>Canadian Court</u> ") in connection with the proceedings commenced pursuant to the Companies' Creditors Arrangement Act (Canada) R.S.C. 1985, c. C-36, as amended, in the Canadian Court (the " <u>Canadian Proceedings</u> "), all fees and expenses required to be paid to the Information Officer and its counsel in connection with the Canadian Proceedings, which fees and expenses may be secured by a charging lien granted by the Canadian Court over the Debtors' assets in Canada, in the maximum amount of CDN \$200,000, (c) all

<sup>3</sup> This statement is qualified in its entirety by reference to the provisions of the Interim Order. To the extent that there is any conflict between this Motion and the Interim Order, the Interim Order shall control.

	<p>reasonable fees and expenses incurred by a trustee under section 726(b) of the Bankruptcy Code not to exceed \$50,000 and (d) the allowed and unpaid professional fees, expenses and disbursements incurred on or after the Termination Date by the Debtors and the Committee for any professionals retained by final order of the Court (which order has not been vacated or stayed, unless the stay has been vacated) by the Debtors and the Committee under sections 327, 328 or 1103(a) of the Bankruptcy Code (the “<u>Chapter 11 Case Professionals</u>”) in an aggregate amount not to exceed \$6 million plus such allowed fees, expenses and disbursements incurred prior to the Termination Date, but which remain unpaid as of the Termination Date, whether approved by the Court before or after the Termination Date (collectively, the “<u>Allowed Professional Fees</u>”).</p> <p>Prior to the occurrence of the Termination Date, the Debtors shall be permitted to pay Allowed Professional Fees. The amounts paid shall not reduce the Carve-Out.</p>
<b><u>Section 506(c) Waiver</u></b>	<p><b>Upon entry of the Final Order, the Debtors waive their right to surcharge against the Prepetition Collateral pursuant to section 506(c) of the Bankruptcy Code. This grant constitutes a Material Provision. (Interim Order at ¶ 14.)</b></p>

### **Background**

#### **A. Introduction**

5. On May 14, 2012 (the “Petition Date”), each of the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

6. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Debtors have requested the joint administration of these Chapter 11 Cases for procedural purposes. No trustee, examiner or statutory committee of unsecured creditors has been appointed in these Chapter 11 Cases.

#### **B. Overview of Debtors’ Businesses**

##### *(i) Debtors’ Satellite Business*

7. LightSquared, a mobile communications company with headquarters in New York and incorporated in Delaware in 1985, is the first private company to offer mobile satellite services throughout North America, initially using two geostationary satellites<sup>4</sup> as well

<sup>4</sup> These two first-generation satellites, known as MSAT-1 and MSAT-2, currently provide services to some existing customers, and have also, since March 10, 2012, provided emergency back-up service to all of LightSquared’s customers due to a solar flare(s), which temporarily disabled the SkyTerra-1 satellite, one

as a portion of the electromagnetic spectrum known as the L-Band. Since its first satellite became operational in 1996, LightSquared has provided satellite communications services – which include data, voice, fax and dispatch services – to companies and federal, state, provincial, local and foreign governments that are wholesale purchasers of bandwidth power and capacity, resellers of telephony, data and dispatch services and retail voice users. For example, LightSquared provides services to public safety officers, emergency responders and the United States military. Today, LightSquared’s mobile satellite business generates approximately \$30 million in annual revenue and provides service to approximately 300,000 end users.

8. LightSquared launched SkyTerra-1 in November 2010, which, as mentioned above, is one of two next-generation satellites that have been constructed by LightSquared. LightSquared’s next-generation satellites are two of the most powerful mobile satellites ever constructed. Each is equipped with a 22 meter (75 foot) diameter antenna, which provides ten (10) times better performance than that provided by LightSquared’s prior satellites. The satellites have the capability of forming up to five hundred (500) beams over North America and can operate with devices that are as small as standard cell phones or USB modems. The SkyTerra-1 and SkyTerra-2 satellite networks utilize state-of-the art ground-based beam forming systems. Such systems allow flexibility in beam shapes, number, bandwidth allocation and beam power allocation, which is unprecedented in prior mobile satellite systems. SkyTerra-1 is fully operational, and SkyTerra-2 is constructed and stored in preparation for launch.

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of LightSquared’s two next-generation satellites. LightSquared is currently finalizing the assessment of the solar flare(s) prior to transitioning customers back to that satellite for service. LightSquared will also rely upon the MSAT system until such time that SkyTerra-2, LightSquared’s second next-generation satellite, is launched. Both MSAT-1 and MSAT-2 are approaching the ends of their useful lives and are part of the Prepetition LP Collateral (as defined below). They have, in the past, experienced anomalies and Solid State Power Amplifier failures and neither currently operates at full capacity.



9. LightSquared currently operates three (3) lines of business, including Mobile Satellite Communications (“MSAT”), Mobile Data Services (“MDS”) and Private Network Carriers (“PNC”) through a wholesale business model whereby its partners bill the end users, and LightSquared bills its partners at a wholesale rate. Through these three lines of business, LightSquared has over fifteen wholesale partners, including, but not limited to, Comtech Mobile Datacom Corporation, XATA Corporation, SkyBitz, Outerlink, Omnistar, Wireless Matrix, EMS Technologies/Honeywell, Network Innovations, Glentel, Astrum, Infosat, Inmosat and International Satellite Service, that collectively support approximately 300,000 subscribers across several markets throughout North America.

10. MSAT Business. LightSquared’s MSAT business provides circuit-switched voice, low data rate services and push-to-talk (“PTT”) services, which are sold through LightSquared’s authorized wholesale service providers and are utilized by a variety of governmental agencies at the federal, state and local level, as well as by various markets in the enterprise space. LightSquared is currently the only commercial satellite operator in North America offering PTT service. LightSquared’s two-way, PTT radio service over satellite is a popular option for communications in remote areas or during emergency situations, and its dispatch or two-way radio style is familiar to the public safety community and ideal for command and control. Thus, in the public/government sector, LightSquared’s MSAT business serves end users in public safety, emergency management and defense as well as health and education.

11. Specifically, LightSquared’s PTT products and services were utilized by public safety and education (such as the University of North Carolina Wilmington) end users during, and in preparation for, several disasters, including Hurricane Katrina (Mississippi Department of Wildlife, Fisheries and Parks), Hurricane Gustav (several federal, state and local

agencies), Hurricane Irene (DE State Police, MD Emergency Management Agency), Kentucky Ice Storms (Kentucky Department for Public Health) and, most recently, the tornadoes in Kentucky (Kentucky Department for Public Health). In all of these disasters, LightSquared's mobile satellite service, with its PTT capability, provided instant communications for public safety agencies and a means for interoperability among disparate agencies.

12. Moreover, in recent years, the United States has faced a variety of costly natural and man-made disasters, including hurricanes, tornadoes, wildfires, flooding and earthquakes, as well as the 9/11 terrorist attacks, which have amplified the need for dependable communications that enable organizations to communicate with each other. Often, the only means available to the public safety/emergency responder community to do so is through mobile satellite communications. To address these needs, federal, state and local agencies have voluntarily banded together with LightSquared in a public-private partnership to create the Satellite Mutual Aid Radio Talkgroup ("SMART") program – enabling nationwide and regional interoperability at no additional cost to LightSquared users. Since SMART is a feature provided at no cost to LightSquared's public safety end users, the SMART program, incorporating such SMART feature, is a cost-efficient program that delivers measurable return on investment – swift and reliable communications interoperability for emergency response and contingency operations. With the rapid growth of SMART, public safety and emergency responders have a resource that enables communications interoperability that is immediate, reliable and always available.

13. It is thus no surprise that the nationwide and regional SMART end users include, among others, (a) JSMART, utilized by public safety agencies across the country and managed by the DOJ Wireless Management, (b) LSMART, utilized nationally by law enforcement and managed by the U.S. Marshals Service, (c) USMART, utilized by urban search

and rescue teams across the United States and managed by the Montgomery County, Maryland Fire & Rescue Service, (d) NE SMART, utilized by the northeast states and managed by the Connecticut State Police, (e) WSMART, utilized by the western states and managed by the California Emergency Management Agency and (f) MWSMART, utilized by the midwest states and managed by the Indiana Department of Homeland Security.

14. The MSAT line of business also serves various markets in the enterprise space, including maritime, oil and gas, utilities, transportation, media and recreation. In the maritime vertical market, especially in Alaska, fishermen rely on LightSquared's PTT capability while at sea in extreme environments, especially north of 60° toward the Aleutians. Additionally, enterprise users in the oil and gas industry rely on LightSquared's mobile satellite service in the Gulf region to communicate with workboats and on oil rigs/platforms for instantaneous communication between rigs/boats and back to operations centers on the coast.

15. MDS Business. LightSquared's second line of business, MDS, is a low data rate service offering used primarily for applications such as fleet and load management, email, vehicle tracking, two-way messaging and broadcast messaging. Like LightSquared's MSAT services, MDS is sold through LightSquared's authorized wholesale service providers and is utilized by various end users. One such end user, the New Mexico State Police, utilizes MDS in police cruisers to enable officers to perform database lookups on ruggedized laptops in remote areas where no terrestrial communications exist and LightSquared's satellite service is the only means by which to meet this critical data communications requirement in an effective manner.

16. PNC Business. Finally, LightSquared's third line of business, PNC, enables customers to lease bandwidth from LightSquared over which they offer custom satellite data solutions (typically, asset tracking services for truck and rail) to a wide variety of end users. In

connection therewith, LightSquared's PNC customers are responsible for developing a custom air interface, providing hub, end-user equipment and servicing end users. One of LightSquared's largest PNC customers, SkyBitz, provides asset tracking services through LightSquared's satellite capacity for Tri State Motor Transit Co., an end user that hauls high-risk cargo such as munitions, explosives and nuclear fuel bound for sites from coast to coast. LightSquared's satellite capacity ensures that trailers hauling this cargo are constantly tracked where terrestrial communications do not exist. Another PNC customer, Comtech Mobile Datacom Corp., provides service to the United States military, utilizing LightSquared's service in North America in connection with the Blue Force Tracking system that tracks all military assets.

(ii) *Debtors' Terrestrial Component of Satellite Business*

17. In the late 1990s, LightSquared determined that adding a terrestrial (*i.e.*, land-based) component to its satellite system would optimize the use of the L-Band and provide a communications system with superior reliability and coverage. By combining a nationwide system of terrestrial base stations with one of the largest commercial satellites ever launched – the state-of-the-art SkyTerra-1 – LightSquared could offer coverage of a satellite system in North America and the capacity of a next-generation, high-speed wireless broadband network.

18. LightSquared determined that a significant market opportunity was created for a wholesale-only, 4th Generation Long Term Evolution ("4G LTE") wireless broadband network due to, among other things, (a) the proliferation of new mobile devices, such as smartphones and tablets, which accelerated demand for ubiquitous, on-the-go data-rich Internet services, (b) limited wireless network capacity available to support increased data usage and (c) substantial costs and barriers to entry preventing smaller carriers and new operators from deploying nationwide 4G LTE networks. LightSquared believed that many wireless operators

would face significant challenges meeting network demands due to spectrum availability and capital shortages because the wireless communications industry was (and currently remains) dominated by a small number of established, national wireless carriers and current levels of data transmission already utilized significant network capacity. This led LightSquared to conclude that some carriers would be unable to deploy their own 4G LTE networks in a timely and cost-effective manner, while others would be unable to install enough capacity to serve the needs of their existing customer bases, thereby resulting in such carriers being unable to offer comparable service quality and speeds on a cost-competitive basis with the largest national carriers. To address this imbalance, LightSquared's strategy was, and currently remains, to enable a broad range of potential wholesale customers to launch competitive retail wireless service offerings using wholesale capacity on LightSquared's 4G LTE network.

19. Accordingly, LightSquared initiated the process of building the only 4G LTE open wireless broadband network that incorporates both terrestrial (*i.e.*, land-based) and satellite coverage throughout North America and offers people the speed, value and reliability of universal connectivity, wherever they may be located. The satellite component of the system would provide service to the population in areas not otherwise covered by terrestrial systems. Through its wholesale-only business model, entities without their own wireless network, or that have limited geographic coverage or spectrum, will be able to market and sell their own devices, applications and services using the LightSquared network at a competitive price and without retail competition from LightSquared. This, in turn, will enable manufacturers and retailers to provide a solution for consumers, while creating new customer relationships and ongoing revenue streams for themselves. LightSquared's partners will also be able to develop their own

devices, applications and services on the LightSquared network because it is a completely open network system.

20. As of the Petition Date, the Debtors employed approximately 168 people in the United States and Canada. As of February 29, 2012, the Debtors had approximately \$4.48 billion in assets (book value) and \$2.29 billion in liabilities.

**C. Debtors' Debt Structure**

*(i) LightSquared Inc. Facility*

21. Certain of the Debtors are party to that certain Credit Agreement, dated as of July 1, 2011 (as amended, supplemented, amended and restated or otherwise modified from time to time, the "Prepetition Inc. Credit Agreement"), between LightSquared Inc., as borrower, the subsidiary guarantors party thereto, namely One Dot Four Corp., One Dot Six Corp. and One Dot Six TVCC Corp. (each, a "Prepetition Inc. Subsidiary Guarantor" and, collectively, the "Prepetition Inc. Subsidiary Guarantors" and, collectively with LightSquared Inc., the "Inc. Obligors"), the lenders party thereto (collectively, the "Prepetition Inc. Lenders") and U.S. Bank National Association, as successor administrative agent to UBS AG, Stamford Branch (in such capacity, the "Prepetition Inc. Agent"). The Prepetition Inc. Lenders provided term loans in the aggregate principal amount of \$278,750,000 (the "Prepetition Inc. Credit Facility"). The maturity date for the Prepetition Inc. Credit Facility was extended from July 1, 2012 to December 31, 2012.

22. Amounts outstanding under the Prepetition Inc. Credit Facility (the "Prepetition Inc. Obligations") are allegedly secured by a first-priority security interest in (a) the One Dot Six Lease, (b) the capital stock of each Prepetition Inc. Subsidiary Guarantor (*i.e.*, One Dot Four Corp., One Dot Six Corp. and One Dot Six TVCC Corp.) and (c) all proceeds and

products of each of the foregoing (collectively, the "Prepetition Inc. Collateral").<sup>5</sup> The Prepetition Inc. Collateral does not include cash.

23. As of the Petition Date, an aggregate amount of approximately \$322,333,494 was outstanding under the Prepetition Inc. Credit Facility.

(ii) *LightSquared LP Facility*

24. Certain of the Debtors are also party to that certain Credit Agreement, dated as of October 1, 2010 (as amended, supplemented, amended and restated or otherwise modified from time to time, the "Prepetition LP Credit Agreement"), between LightSquared LP, as borrower, LightSquared Inc. and the other parent guarantors party thereto, namely LightSquared Investors Holdings Inc., LightSquared GP Inc. and TMI Communications Delaware, Limited Partnership (collectively, the "Prepetition LP Parent Guarantors"), the subsidiary guarantors party thereto, namely ATC Technologies, LLC, LightSquared Corp., LightSquared Inc. of Virginia, LightSquared Subsidiary LLC, SkyTerra Holdings (Canada) Inc. and SkyTerra (Canada) Inc. (collectively, the "Prepetition LP Subsidiary Guarantors" and, collectively with LightSquared LP and the Prepetition LP Parent Guarantors, the "LP Obligors"), the lenders party thereto (the "Prepetition LP Lenders" and, together with the Prepetition Inc. Lenders, the "Prepetition Lenders"), UBS AG, Stamford Branch, as administrative agent (in such capacity, and together with Wilmington Trust FSB,<sup>6</sup> the "Prepetition LP Agent" and, together with the Prepetition Inc. Agent, the "Prepetition Agents" and, together with the Prepetition Lenders, the "Prepetition Secured Parties"), and other parties thereto, under which the

<sup>5</sup> Previously, the Prepetition Inc. Credit Facility also was collateralized by the One Dot Four Lease. However, such lease is no longer part of the collateral package given that such lease has been terminated (as further discussed in the Montagner Declaration).

<sup>6</sup> Wilmington Trust FSB serves as collateral trustee pursuant to that certain Collateral Trust Agreement, dated as of October 1, 2010 (as amended, supplemented, amended and restated or otherwise modified from time to time, the "LP Collateral Trust Agreement"), between LightSquared LP, UBS AG, Stamford Branch and Wilmington Trust FSB.

Prepetition LP Lenders provided term loans in the aggregate principal amount of \$1,500,000,000 (the "Prepetition LP Credit Facility").

25. Amounts outstanding under the Prepetition LP Credit Facility (the "Prepetition LP Obligations") are allegedly secured by a first-priority security interest in (a) substantially all of the assets of LightSquared LP and the Prepetition LP Subsidiary Guarantors, (b) the equity interests of LightSquared LP and the Prepetition LP Parent Guarantors (except LightSquared Inc.), (c) the equity interests of the Prepetition LP Subsidiary Guarantors and (d) the rights of LightSquared Inc. under and arising out of the Inmarsat Cooperation Agreement (collectively, the "Prepetition LP Collateral" and, together with the Prepetition Inc. Collateral, the "Prepetition Collateral").<sup>7</sup>

26. As of the Petition Date, an aggregate amount of approximately \$1,700,571,106 was outstanding under the Prepetition LP Credit Facility.

**D. Additional Information**

27. Additional information regarding the Debtors' businesses, assets, capital structure and the circumstances leading to the filing of these Chapter 11 Cases is set forth in the Montagner Declaration, which was filed contemporaneously herewith.

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<sup>7</sup> The Prepetition LP Collateral does not include the following: (a) any permit or license issued by a Governmental Authority (as defined in the Prepetition LP Credit Agreement) or other agreement to the extent the terms thereof validly prohibit the creation by the pledgor thereof of a security interest in such permit, license or other agreement; (b) property subject to any purchase money or vendor financing if the contract or other agreement in which such lien is granted validly prohibits the creation of any other lien on such property; (c) property subject to any capital lease; (d) any intent-to-use trademark application to the extent a security interest therein would result in the loss by the pledgor thereof of any material rights therein; (e) certain deposit and securities accounts securing currency hedging or credit card vendor programs or letters of credit provided to vendors in the ordinary course of business; (f) equity interests in (i) excess of 66% in non-U. S. subsidiaries held by a US subsidiary, (ii) LightSquared Network LLC and (iii) any joint venture or similar entity to the extent the terms of such investment restrict such security interest; and (g) any consumer goods subject to the Canadian Security Agreement (as defined in the Prepetition LP Credit Agreement) (collectively, the "Prepetition LP Excluded Collateral").



**Use of Cash Collateral and Provision of Adequate Protection**

**A. Need for Use of Cash Collateral**

28. To address their working capital needs and fund their reorganization efforts, the Debtors require authorization to continue to use cash collateral (as such term is defined in section 363 of the Bankruptcy Code (the “Cash Collateral”)) of the Prepetition Secured Parties.<sup>8</sup> As described more fully in the Montagner Declaration, the Debtors are at a critical development stage with little operating revenue. The Debtors do not generate sufficient unencumbered cash from operations to cover their operating expenses and require the use of Cash Collateral of the Prepetition Secured Parties to meet capital expenditures and other non-operating cash expenses.<sup>9</sup> The Debtors have, with the assistance of their financial advisors, Moelis & Company LLC (“Moelis” or the “Financial Advisor”), analyzed their cash needs in an effort to determine what is necessary to maintain their operations in chapter 11 and work towards a successful reorganization. In undertaking this analysis, the Debtors and their advisors have considered the impact of the current economic outlook on the Debtors’ near-term projected financial performance. The Debtors also conferred with individuals in the Debtors’ operational and management teams to understand key business metrics in both the near and long term.

29. Absent approval of the Debtors’ use of Cash Collateral, the Debtors’ financial analysis and projections make clear that, with a monthly burn rate of historically

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<sup>8</sup> The Prepetition Secured Parties’ Cash Collateral does not include amounts the Debtors receive from their former satellite retail customers, which amounts they are obligated to remit to NI Satellite Inc. and NI Government Services Inc., respectively, pursuant to that certain Asset Purchase Agreement, dated August 26, 2011, between LightSquared LP and NI Satellite Inc. and (b) that certain Asset Purchase Agreement, dated August 26, 2011, between LightSquared LP and NI Government Services Inc. Such funds, which currently amount to approximately \$10,000 to \$15,000 week, are expected to decrease as customer accounts are systematically transitioned to making payments directly to NI Satellite Inc. and NI Government Services Inc.

<sup>9</sup> Debtor LightSquared Inc. does have approximately \$15 million of unencumbered cash that the Debtors also intend to use for operations, and it is thus not necessary to provide adequate protection for the use of such funds.

approximately \$12 million to \$15 million (which does not include large milestone-driven, vendor-type payments), the Debtors' current unencumbered cash on hand and minimal unencumbered cash generated from their operations would be insufficient to, among other things, engage in ongoing discussions with the Federal Communications Commission (the "FCC") regarding the deployment of the Debtors' network, maintain business relationships with their vendors, suppliers and customers, including public safety agencies, pay their employees and otherwise finance their operations. Funding each of these expenditures is necessary to the Debtors' ability to preserve and maintain their going-concern values for the benefit of all parties in interest, and without such funding, the Debtors would be forced to terminate their business operations and liquidate their assets – all to the material detriment of all parties in interest in these Chapter 11 Cases, particularly the Prepetition Secured Parties. Furthermore, such funding is crucial for purposes of preserving general public safety – the use of Cash Collateral is necessary for the Debtors to continue providing uninterrupted mobile satellite services to their customers, who include federal, state and local public safety officers and emergency responders and the United States military. The Debtors therefore need to ensure that working capital is immediately available for their use.

30. Recognizing the Prepetition Secured Parties' concern that unfettered use of the Cash Collateral would deplete their asset pool, the Debtors have agreed to use Cash Collateral in accordance with a budget (the "Budget"), attached as Schedule 1 to the Cash Collateral Orders, developed by the Debtors in consultation with Moelis. The Debtors believe that the Budget is achievable and will allow the Debtors to operate without the accrual of unpaid administrative expenses.

**B. Proposed Adequate Protection**

31. Pursuant to sections 361 and 363(e) of the Bankruptcy Code, the Prepetition Secured Parties are entitled to adequate protection for any diminution in value of their respective interests in the Cash Collateral. As discussed below, each of the Prepetition Secured Parties is oversecured and thus already adequately protected by a significant equity cushion. Nonetheless, the Debtors propose to provide to the Prepetition Secured Parties with the following additional adequate protection to forestall any argument to the contrary (collectively, the "Adequate Protection Obligations"):

- (a) Adequate Protection Liens. The Prepetition *Inc.* Agent (for itself and for the benefit of the Prepetition Inc. Lenders) will receive, effective and perfected upon the date of the Interim Order and without the necessity of the execution by the Debtors of security agreements, pledge agreements, mortgages, financing statements or other agreements, valid, perfected replacement liens on the Prepetition Inc. Collateral (the "Inc. Adequate Protection Liens"), subject and subordinate only to the Inc. Permitted Liens (as defined in the Interim Order) and the Carve-Out.

The Prepetition *LP* Agent (for itself and for the benefit of the Prepetition LP Lenders) will receive, effective and perfected upon the date of the Interim Order and without the necessity of the execution by the Debtors of security agreements, pledge agreements, mortgages, financing statements or other agreements, valid, perfected replacement liens on the Prepetition LP Collateral (the "LP Adequate Protection Liens" and, together with the Inc. Adequate Protection Liens, the "Adequate Protection Liens"), subject and subordinate only to the LP Permitted Liens (as defined in the Interim Order) and the Carve-Out.

- (b) Section 507(b) Claims. The Prepetition Secured Parties will be granted allowed superpriority claims as provided in section 507(b) of the Bankruptcy Code (the "507(b) Claims"). Except as set forth in the Interim Order, the Section 507(b) Claims shall have priority over all administrative expense claims and unsecured claims against the Inc. Obligors and the LP Obligors, as applicable, or their estates, now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, administrative expenses of the kinds specified in or ordered pursuant to Bankruptcy Code sections 105, 326, 328, 330, 331, 365, 503(a), 503(b), 507(a), 507(b), 546(c), 546(d), 726 (to the extent permitted by law), 1113 and 1114; provided, however, that each of the Section 507(b) Claims shall be junior to the Carve-Out.

- (c) Fees and Expenses. The Debtors are authorized and directed to provide adequate protection in the form of: (a) payment of all reasonable, actual and documented fees and expenses incurred or accrued by the Prepetition Inc. Agent under and pursuant to the Prepetition Inc. Agreement, including, without limitation, the reasonable, actual and documented fees and disbursements of counsel to the Prepetition Inc. Agent, whether incurred or accrued prior to or after the Petition Date and (b) payment of all reasonable, actual and documented fees and expenses incurred or accrued by the Prepetition LP Agent under and pursuant to the Prepetition LP Agreement, including, without limitation, the reasonable, actual and documented fees and disbursements of counsel to the Prepetition LP Agent, whether incurred or accrued prior to or after the Petition Date, in each case, subject to the rights of parties in interest pursuant to section 506(b) of the Bankruptcy Code. None of the fees and expenses payable pursuant to this paragraph shall be subject to separate approval by this Court (but this Court shall resolve any dispute as to the reasonableness of any such fees and expenses), and no recipient of any such payment shall be required to file any interim or final fee application with respect thereto. Subject to any *bona fide* dispute as to the reasonableness of such fees and expenses, the Debtors shall pay the reasonable, actual and documented fees and expenses provided for in this section promptly (but no later than ten (10) business days) after invoices for such fees and expenses shall have been submitted to the Debtors, and the Debtors shall promptly provide copies of such invoices to the Committee (if any) and the U.S. Trustee. Any and all payments or proceeds remitted to the Prepetition Agents pursuant to the provisions of this Interim Order or any subsequent order of this Court shall be received free and clear of any claim, charge, assessment or other liability.

**C. Modification of Automatic Stay**

32. The automatic stay provisions of section 362 of the Bankruptcy Code must be modified to the extent necessary to enable the Prepetition Agents to, among other things, (a) file or record any UCC-1 financing statements, mortgages, deeds of trust, security deeds and other instruments and documents evidencing or validating the perfection of the Adequate Protection Liens and (b) enforce any of the Adequate Protection Liens as and to the extent authorized by the Cash Collateral Orders.

**D. Waiver of Certain Rights**

33. The Debtors are also proposing, effective after the entry of the Final Order, to waive the estates' rights under section 506(c) of the Bankruptcy Code vis-à-vis the Prepetition Lenders.

**Relief Requested**

34. By this Motion, the Debtors respectfully request entry of the Interim Order and the Final Order, among other things:

- (a) under Bankruptcy Code sections 361 and 363, authorizing the Debtors to use the Cash Collateral of the Prepetition Secured Parties and providing adequate protection to the Prepetition Secured Parties for any diminution in value of their interests in the Cash Collateral;
- (b) under Bankruptcy Code section 362, modifying the automatic stay to the extent set forth in the Interim Order;
- (c) pursuant to Bankruptcy Rule 4001, scheduling the Interim Hearing on this Motion and authorizing the Debtors, from the entry of the Interim Order until the Final Hearing, to utilize Cash Collateral to the extent necessary to avoid immediate and irreparable harm to the Debtors' estates; and
- (d) pursuant to Bankruptcy Rule 4001, scheduling a Final Hearing on this Motion and establishing notice procedures in respect of the Final Hearing by this Court to consider entry of the Final Order authorizing the Debtors to use Cash Collateral on a final basis.

**Basis for Relief**

**A. Use of Cash Collateral Should Be Approved**

35. Section 363(c)(2) of the Bankruptcy Code provides that the Debtors may not use, sell, or lease cash collateral unless "(A) each entity that has an interest in such cash collateral consents; or (B) the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of this section." 11 U.S.C. § 363(c)(2). If an entity with an interest in cash collateral objects to the use of cash collateral, the court must ensure that such

entity is adequately protected for the diminution in the value of its interest in the cash collateral. See 11 U.S.C. 363(e) (“[O]n request of an entity that has an interest in property used . . . the court, with or without a hearing, shall prohibit or condition such use . . . as is necessary to provide adequate protection of such interest”). Courts must therefore balance the sufficiency of the protection a debtor seeks to provide an entity with an interest in the cash collateral with such debtor’s need to use the cash in its reorganization effort. See Stein v. U.S. Farmers Home Admin. (In re Stein), 19 B.R. 458, 459 (Bankr. E.D. Pa. 1982) (approving use of cash collateral over objection of secured parties). In ruling whether a debtor may use cash collateral early in a case, courts “will generally permit the business operation to continue, to the point of plan formulation, if [a debtor makes] make a solid evidentiary showing to support [its] projections . . . .” In re Dynaco Corp., 162 B.R. 389, 395 (Bankr. D.N.H. 1993) (approving the use of cash collateral over the objection of secured parties).

36. Consistent with these requirements, courts repeatedly have recognized that the use of cash collateral is appropriate where necessary to preserve a debtor’s ability to reorganize and thus maximize the value of an estate for all interested parties. See, e.g., In re Dynaco Corp., 162 B.R. at 394 (granting a motion for use of cash collateral and stating that “the purpose of Chapter 11 is to rehabilitate debtors and generally access to cash collateral is necessary in order to operate a business”) (citing In re Stein, 19 B.R. at 459); Chrysler Credit Corp. v. George Ruggiere Chrysler-Plymouth, Inc. (In re George Ruggiere Chrysler-Plymouth, Inc.), 727 F.2d 1017, 1019 (11th Cir. 1984) (approving use of cash collateral over objection of secured parties after noting that “[w]ithout the availability of cash to meet daily operating expenses such as rent, payroll, utilities, etc., the congressional policy favoring rehabilitation over economic failure would be frustrated”); MBank Dallas, N.A. v. O’Connor (In re O’Connor), 808

F.2d 1393, 1398-99 (10th Cir. 1987) (permitting debtor to use cash collateral over objection of secured parties to expand operations after finding there was only a low risk that secured creditor's interest would diminish); In re Stein, 19 B.R. at 459 (granting cash collateral motion over the objection of secured parties and declaring that access to cash is imperative for a debtor to operate its business). Courts have also authorized similar relief in other chapter 11 cases. See, e.g., In re 499 W. Warren St. Assocs., Ltd. P'ship, 142 B.R. 53, 58 (Bankr. N.D.N.Y. 1992) (allowing use of cash collateral to maintain property); In re Constable Plaza Assocs., L.P., 125 B.R. 98, 105 (Bankr. S.D.N.Y. 1991) (recognizing that debtor's use of cash collateral to operate and maintain office building would serve to preserve or enhance value of building which in turn would protect collateral covered by lender's mortgage).

37. As discussed above, the Debtors currently lack sufficient unencumbered funds with which to operate their businesses on a long-term go-forward basis and have determined, in the exercise of their business judgment and in consultation with their advisors, that they require the use of Cash Collateral to successfully reorganize. Indeed, the Debtors' ability to engage in ongoing discussions with the FCC regarding the deployment of the Debtors' network, maintain business relationships with their vendors, suppliers and customers, including public safety agencies, pay their employees and otherwise finance their operations is critical to the Debtors' ability to continue as a going concern and continue to fulfill business objectives to benefit all parties in interest. The Debtors propose to use Cash Collateral pursuant to the terms and conditions set forth in the Interim Order and in accordance with the Budget and to adequately protect the Prepetition Secured Parties from diminution in the value of their interests in the Cash Collateral. The Debtors submit that, under these circumstances, the terms and conditions contained in the Interim Order and the Budget are fair and reasonable and in the best

interests of their estates and creditors, and thus, the Debtors' request to use Cash Collateral should be approved.

38. The Debtors have attempted and will continue to attempt to obtain consent to the use of Cash Collateral by the Prepetition Secured Parties on the terms proposed herein and as set forth in the Interim Order. The Prepetition Secured Parties are more than adequately protected for such use, however, if consent cannot be obtained. Moreover, the only alternative to the Debtors' use of Cash Collateral – the cessation of their businesses – would be catastrophic for both the Debtors and the Prepetition Secured Parties as the liquidation value of the Prepetition Collateral is a small fraction of the Debtors' value as a going concern. See In re Yellowstone Mountain Club, LLC, Case No. 08-61570-11, 2008 Bankr. LEXIS 4062 (Bankr. D. Mt. December 17, 2008) (authorizing a priming DIP and use of cash collateral over objection of secured creditor because “the use of the DIP Loan proceeds and the maintenance of the going concern value of the Debtors' business and their assets, is reasonable and sufficient to protect the interests of the Prepetition Agent and the Prepetition Lenders”). The Debtors thus respectfully request that the Court authorize the Debtors to use Cash Collateral pursuant to section 363(c)(2) of the Bankruptcy Code and in accordance with the terms set forth in the Cash Collateral Orders, notwithstanding the Prepetition Secured Creditors' objection to such use.

**B. Interests of Prepetition Secured Parties in Cash Collateral Are Adequately Protected**

39. Section 361 of the Bankruptcy Code, which governs adequate protection, makes clear that adequate protection guards against “a decrease in the value of . . . [the lienholders'] interest in” the collateral:

When adequate protection is required under section 362, 363, or 364 of this title of an interest of an entity in property, such adequate protection may be provided by—



- (1) requiring the trustee to make a cash payment or periodic cash payments to such entity, to the extent that the stay under section 362 of this title, use, sale, or lease under section 363 of this title, or any grant of a lien under section 364 of this title results in a decrease in the value of such entity's interest in such property;
- (2) providing to such entity an additional or replacement lien to the extent that such stay, use, sale, lease, or grant results in a decrease in the value of such entity's interest in such property; or
- (3) granting such other relief, other than entitling such entity to compensation allowable under section 503(b)(1) of this title as an administrative expense, as will result in the realization by such entity of the indubitable equivalent of such entity's interest in such property.

11 U.S.C. § 361; see also In re Gallegos Research Group, Corp., 193 B.R. 577, 584 (Bankr. D. Col. 1995) (approving use of cash collateral over objection of secured parties after observing that “[w]here a debtor desires to use cash collateral, a court must determine the value of the creditor’s interest in the cash collateral and whether the debtor’s proposed use of cash collateral would impair that interest, and to what extent adequate protection is required”).

40. Adequate protection can be provided in various forms, including the payment of fees and the granting of replacement liens and administrative claims, see Bank of N.Y. Trust Co. NA v. Pac. Lumber Co. (In re Scopac), 624 F.3d 274, 278 n.1 (5th Cir. 2010) (noting that “adequate protection ... in short, it is a payment, replacement lien, or other relief sufficient to protect the creditor against diminution in the value of his collateral during the bankruptcy” while approving use of cash collateral over objection of secured parties), and what constitutes adequate protection is decided on a case-by-case basis. See In re Realty Sw. Assocs., 140 B.R. 360, 366 (Bankr. S.D.N.Y. 1992) (holding that “adequate protection is a question of fact because it has as its linchpin the concept of value, and therefore is determined on a case-by-case basis” while approving use of cash collateral over objection of secured parties) (citation omitted); In re Beker Indus. Corp., 58 B.R. 725, 736 (Bankr. S.D.N.Y. 1986), rev’d on other grounds, 89 B.R. 336 (S.D.N.Y. 1988) (application of adequate protection “is left to the vagaries

of each case, but its focus is protection of the secured creditor from diminution in the value of its collateral during the reorganization process”) (citation omitted). In so deciding, courts should take equitable considerations into account. See In re Dynaco Corp., 162 B.R. at 394 (“Adequate protections will take many forms, only some of which are set forth in section 361 of the Bankruptcy Code . . . and must be determined based upon equitable considerations arising from the particular facts of each proceeding.”); In re Stein, 19 B.R. at 459 (“The equities in each case must be weighed in striking a balance.”).

41. As explained below, the Prepetition Secured Parties are already adequately protected in these Chapter 11 Cases by a significant equity cushion in the Prepetition Collateral. As a matter of law, adequate protection is not required of any equity cushions – the lenders are protected by the excess value in their collateral.

42. To eliminate any concerns, however, that the Prepetition Secured Parties are not adequately protected, the Debtors have proposed additional adequate protection and a package that is consistent with many other cases in this district – in the form of the Adequate Protection Liens, the 507(b) Claims and payment of professional fees – that is more than sufficient to permit the Court to authorize the Debtors’ use of Cash Collateral.

(i) *Prepetition Secured Parties’ Significant Equity Cushion Provides Sufficient Adequate Protection.*

43. Courts have recognized that “[a]n adequate ‘cushion’ can itself constitute adequate protection with nothing more.” In re Tucker, 5 B.R. 180, 182 (Bankr. S.D.N.Y. 1980) (granting relief from stay to secured creditor with a 7.4% equity cushion in collateral); accord BayBank-Middlesex v. Ralar Distrib., 69 F.3d 1200, 1203 (1st Cir. 1995); see also In re Mellor, 734 F.2d 1396, 1400 (9th Cir. 1984) (holding that existence of an equity cushion is “the classic form of protection for a secured debt”); In re Phoenix Steel Corp., 39 B.R. 218, 224 (D. Del.

1984) (“It is clear that if a sufficient equity cushion exists [a creditor’s] security would not be impaired and they would be adequately protected.”); Mut. Life Ins. Co. of NY v. Patrician St. Joseph Partners Ltd. P’ship (In re Patrician St. Joseph Partners Ltd. P’ship), 169 B.R. 669, 677 (D. Ariz. 1994) (“A classic method for finding adequate protection is the existence of an equity cushion. In fact, it has been found that an equity cushion standing alone can provide evidence of adequate protection for a secured claim.” (citations omitted)); Oligbo v. Louis (In re Oligbo), 328 B.R. 619, 651 (Bankr. E.D.N.Y. 2005) (“courts have . . . held that a secured creditor is adequately protected where the value of the property is significantly more than the amount of the secured creditor’s claim – that is, that an equity cushion adequately protects the secured creditor’s interest”).

44. Moreover, because adequate protection protects the value of a secured creditor’s collateral as of the day it is requested, it is not intended to preserve an “ever-green” equity cushion for the creditor. Thus, an oversecured claimholder is not entitled to receive periodic protection<sup>10</sup> to preserve the value of its equity cushion. See Orix Credit Alliance v. Delta Resources (In re Delta Resources), 54 F.3d 722, 729 (11th Cir. 1995) (“[A]n oversecured creditor’s interest in property which must be adequately protected encompasses the decline in the value of the collateral only, rather than perpetuating the ratio of the collateral to the debt.”).

45. As the Debtors’ advisors will attest at the Interim Hearing, in these Chapter 11 Cases, the Prepetition Inc. Lenders are sufficiently protected by an equity cushion of 33% at the low end and 63% at the high end. As the Debtors’ advisors will further attest at the Interim Hearing, the Prepetition LP Lenders are also sufficiently protected by an equity cushion

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<sup>10</sup> According to section 361(1) of the Bankruptcy Code, “periodic cash payments” are only one form of adequate protection. Nevertheless, as mentioned above, the determination of adequate protection can come in many forms and is dependent on the facts of each case. See Resolution Trust Corp. v. Swedeland Dev. Group (In re Swedeland Develop. Group., Inc.), 16 F.3d 522, 564 (3d Cir. 1994).

of 68% at the low end and 82% at the high end. Both equity cushions are significantly above the amount typically found satisfactory by courts in this and other districts. See, e.g., In re Kost, 102 B.R. 829, 831-32 (D. Wyo. 1989) (collecting cases; equity cushion of 20% or more generally held adequate while equity cushion of under 11% generally held insufficient); Hr'g Tr. at 752:4-7, In re Lyondell Chem. Co., No. 09-10023 (REG) (Bankr. S.D.N.Y. Feb. 27, 2009) (noting that "the evidence shows an equity cushion of about nineteen percent ... well in excess of the *ten percent that we customarily require* as a satisfactory equity cushion.") (emphasis added); see also In re Mellor, 734 F.2d at 1402 (20% equity cushion sufficient); In re Dynaco Corp., 162 B.R. at 398 (17% equity cushion sufficient); In re Hawaii Pacific Indus., 17 B.R. 670, 673 (Bankr. Hawaii 1982) (15% equity cushion sufficient).

46. Since an equity cushion may be a basis for finding the existence of adequate protection, a court's inquiry necessarily focuses on the valuation of the underlying collateral. In re Phoenix Steel Corp., 39 B.R. at 224; see also In re Nationsbank of Va., N.A. v. DCI Publ'g of Alexandria, Inc., 160 B.R. 538, 540 (E.D. Va. 1993) (stating, in dicta, that "[t]he phrase 'adequate protection' is defined in § 361 in sufficiently broad terms that courts and commentators have uniformly concluded that such protection may be provided by a creditor's equity cushion stemming from liens on other property." (*i.e.*, guarantor properties)); In re Mellor, 734 F.2d at 1401 (finding that calculation of an equity cushion excludes any junior liens by other creditors).

47. While the Court has discretion to determine the appropriate method for valuing the collateral, "courts in [the Second] Circuit hold that the appropriate method of valuation to gauge whether the objecting party is adequately protected in a reorganization case is 'going concern' or fair market value." In re Beker Indus. Corp., 58 B.R. at 737 (citing In re

Automatic Voting Machine Corp., 26 B.R. 970, 972 (Bankr. W.D.N.Y. 1983)). See also Winthrol Old Farm Nurseries, Inc. v. New Bedford Inst. for Savings (In re Winthrop Old Farm Nurseries, Inc.), 50 F.3d 72, 74 (1st Cir. 1995) (fair market valuation is appropriate if debtor intends to retain collateral); In re M.C. Pipe, Inc., 2011 WL 5902604, at \*2 (Bankr. E.D.N.C. Oct. 7, 2011) (recognizing that “forced-sale value is usually only used when the property is vacant, inoperative, or must otherwise be disposed of quickly and cheaply”) (citing Murray v. Lyon (In re Cohn), 16 B.R. 140, 144 (Bankr. D. Mass. 1981)); In re Utah 7000, L.L.C., Case No. 08-21869, 2008 WL 2654919, at \*3-7 (Bankr. D. Utah July 3, 2008) (approving priming lien based on fair market value/going concern value of debtors’ property and rejecting creditors’ attempts to use liquidation values to value their collateral).

48. Here, the Debtors have only just begun these Chapter 11 Cases and have done so determined to reorganize and to preserve the value of their businesses as a going concern. Thus, it would be inappropriate at this time to speculate as to the liquidation value of the Debtors because the Debtors will not be liquidating. Instead, the Court should look to the Debtors’ going concern value and find that each of the Prepetition Secured Parties has a significant equity cushion with (a) the Prepetition Inc. Lenders holding liabilities in the amount of approximately \$322,333,494 and (b) the Prepetition LP Lenders holding liabilities in the amount of approximately \$1,700,571,106. Each of these equity cushions provides more than enough adequate protection to each of the Prepetition Secured Parties for the Debtors’ use of Cash Collateral.

(ii) *Additional Adequate Protection Proposed by Debtors Is Sufficient.*

49. Notwithstanding the foregoing, the Debtors recognize that the ultimate value of their businesses is dependent upon the outcome of their discussions with the FCC. Although the Debtors are highly confident that such negotiations will be successfully resolved to

the benefit of the Debtors and their estates and creditors, and, in any event, believe that sufficient equity cushions exist to protect the Prepetition Secured Parties even if they are not successful (with equity cushions of 33% at the low end and 63% at the high end for the Prepetition Inc. Lenders, and equity cushions of 60% at the low end and 78% at the high end for the Prepetition LP Lenders, under such circumstances), they also recognize that the Prepetition Secured Parties should not be made to bear the risk of failed discussions at this stage of the Chapter 11 Cases. See, e.g., In re Swedeland Dev. Group, Inc., 16 F.3d at 567 (“Congress did not contemplate that a creditor could find its priority position eroded and, as compensation for the erosion, be offered an opportunity to recoup dependent upon the success of a business with inherently risky prospects.”). Accordingly, the Debtors have proposed granting (although they do not believe it is required), as additional protection, (a) the Adequate Protection Liens and the 507(b) Claims to the Prepetition Secured Parties and (b) payment of the Prepetition Agents’ respective professional fees.

(a) Replacement Liens Are Sufficient Adequate Protection.

50. Replacement liens can independently provide adequate protection. In re Swedeland Dev. Group, Inc., 16 F.3d at 566 (principle of adequate protection is “demonstrated plainly by the recognition in section 361 that a secured lender may be adequately protected by a replacement lien”); Save Power Ltd. v. Pursuit Athletic Footwear (In re Pursuit Athletic Footwear), 193 B.R. 713, 722 (Bankr. D. Del. 1996) (finding a creditor adequately protected by a replacement lien and denying a request for additional protection). COLLIER also supports the proposition that adequate protection can be satisfied with replacement liens:

If the trustee proposes to grant, under section 364, a senior lien on property on which the entity has a lien, to secure a loan from a new lender, the trustee must provide adequate protection of the entity’s interest in the property. Although usually this protection will take the form of additional or replacement liens . . .

3 COLLIER ON BANKRUPTCY ¶ 361.03 [2] (16th ed. 2011).

51. As discussed above, the Debtors have proposed to provide the Prepetition Secured Parties with replacement liens on the Prepetition Collateral securing the obligations under their respective credit facilities. Moreover, the Debtors have proposed to provide each of the Prepetition Secured Parties a Section 507(b) Claim and each of the Prepetition Agents the professional fees they incur throughout the Chapter 11 Cases. Because additional tangible value is being provided to the Prepetition Secured Parties in exchange for the Debtors' use of Cash Collateral, the Prepetition Secured Parties are adequately protected for purposes of section 363 of the Bankruptcy Code.

52. For the foregoing reasons, the Debtors' proposed adequate protection should be approved, and the Court should authorize the Debtors' use of Cash Collateral in accordance with the terms and conditions of the Cash Collateral Orders.

(b) Value Enhancing Use of Cash Collateral Provides Sufficient Adequate Protection.

53. Courts also consistently permit the use of cash collateral over a secured creditor's objection upon a showing that the use of cash collateral would actually increase the value of the secured creditor's collateral overall. See, e.g., In re 495 Cent. Park Ave. Corp., 136 B.R. 626, 631 (Bankr. S.D.N.Y. 1992) ("[T]here is no question that the property would be improved by the proposed renovations and that an increase in value will result. In effect, a substitution occurs in that the money spent for improvements will be transferred into value. This value will serve as adequate protection for Hancock's secured claim."); Hartigan v. Pine Lake Village Apartment Co. (In re Pine Lake Village Apartment Co.), 16 B.R. 750, 756-57 (Bankr. S.D.N.Y. 1982) (permitting debtor's use of cash collateral over secured creditor's objection after finding use of cash collateral will preserve value of secured creditor's collateral).

54. As the Debtors' advisors and management will attest at the Interim Hearing, there is no question that the assets constituting the Prepetition Collateral at issue here are unlikely to erode over the course of the Chapter 11 Cases, but rather, should increase in value as the Debtors work to utilize them in their businesses. The Court should thus permit the Debtors to use Cash Collateral to support their continued efforts with the FCC to implement the build out of their network because such value-enhancing activity serves to adequately protect the Prepetition Secured Parties' interests in the Cash Collateral.

55. In light of the foregoing, in these Chapter 11 Cases, the Debtors have proposed more than sufficient adequate protection to protect the interests of the Prepetition Secured Parties in the Cash Collateral, and, as a matter of law, the Prepetition Secured Parties are not entitled to receive anything more than what the Debtors have offered.

**C. Authorization To Use Cash Collateral on an Interim Basis Is Necessary To Prevent Immediate and Irreparable Harm**

56. Bankruptcy Rule 4001(b)(2) governs the procedures for obtaining authorization to use cash collateral and provides, in relevant part:

The court may commence a final hearing on a motion for authorization to use cash collateral no earlier than 14 days after service of the motion. If the motion so requests, the court may conduct a hearing before such 14 day period expires, but the court may authorize the use of only that amount of cash collateral as is necessary to avoid immediate and irreparable harm to the estate pending a final hearing.

Fed. R. Bankr. P. 4001(b)(2). In examining requests for interim relief under the immediate and irreparable harm standard, courts apply the same business judgment standard applicable to other business decisions. See, e.g., In re Ames Dep't Stores, Inc., 115 B.R. 34, 36 (Bankr. S.D.N.Y. 1990); In re Simasko Prod. Co., 47 B.R. 444, 449 (D. Colo. 1985).

57. Immediate and irreparable harm would result if the relief requested herein is not granted on an interim basis. As described in detail above and in the Montagner



Declaration, the Debtors have very little unencumbered cash on hand. As such, they must obtain authorization to use Cash Collateral in order to, among other things, engage in ongoing discussions with the FCC regarding the deployment of the Debtors' network, maintain business relationships with their vendors, suppliers and customers, including public safety agencies, pay their employees and otherwise finance their operations. Funding each of these expenditures is necessary to the Debtors' ability to preserve and maintain their going-concern values for the benefit of all parties in interest. Furthermore, such funding is crucial for purposes of preserving general public safety – the use of Cash Collateral is necessary for the Debtors to continue providing uninterrupted mobile satellite services to their customers, who include federal, state, and local public safety officers and emergency responders and the United States military.

58. Absent authorization to use Cash Collateral, the Debtors will not be able to pay their payroll and other direct operating expenses or to obtain services needed to run their businesses in the ordinary course. Moreover, without such funds, the Debtors will not be able to continue to engage the FCC in discussions about obtaining the necessary authority to build out their network. The availability to the Debtors of sufficient working capital and liquidity is thus vital to the confidence of the Debtors' employees, suppliers and customers, including public safety agencies, as well as to the preservation and maintenance of the value of the Debtors' estates.

59. Accordingly, the Debtors believe that, under the circumstances, entry of the Interim Order is necessary to prevent immediate and irreparable harm to the estates and therefore is warranted under Bankruptcy Rule 4001(b)(2).

**D. Modification of Automatic Stay Provided Under Section 362 of Bankruptcy Code Is Appropriate Under Circumstances**

60. Paragraph 17 of the proposed Interim Order contemplates a modification of the automatic stay imposed by section 362(a) of the Bankruptcy Code to the extent applicable and necessary, to permit the parties to implement the terms of the Interim Order. Provisions of this kind are standard and reasonable under the circumstances.

**E. Notice Procedures Should Be Established and Final Hearing Should Be Scheduled**

61. Notice of this Motion will be provided by electronic mail, facsimile, regular or overnight mail and/or hand delivery to (a) the U.S. Trustee, (b) the entities listed on the Consolidated List of Creditors Holding the 20 Largest Unsecured Claims filed pursuant to Bankruptcy Rule 1007(d), (c) counsel to the Prepetition Agents, (d) counsel to the ad hoc secured group of Prepetition LP Lenders, (e) counsel to Harbinger Capital Partners, (f) the Internal Revenue Service, (g) the United States Attorney for the Southern District of New York, (h) the Federal Communications Commission and (i) Industry Canada (the "Initial Notice Parties"). Due to the urgency of the circumstances surrounding this Motion and the nature of the relief requested herein, the Debtors respectfully submit that no other or further notice is required or necessary.

62. The Debtors further respectfully request that the Court schedule the Final Hearing and authorize them to mail copies of the signed Interim Order, which fixes the time, date and manner for the filing of objections, to the Initial Notice Parties and (a) any party that has filed prior to such date a request for notices with this Court and (b) counsel for any statutory committee(s). The Debtors request that the Court consider such notice of the Final Hearing, including without limitation, notice that the Debtors will seek approval at the Final Hearing of a

waiver of rights under Bankruptcy Code section 506(c), to be sufficient notice under Bankruptcy Rule 4001(c)(2).

**Motion Practice**

63. This Motion includes citations to the applicable rules and statutory authorities upon which the relief requested herein is predicated and a discussion of their application to this Motion. Accordingly, the Debtors submit that this Motion satisfies Local Rule 9013-1(a).

**No Previous Request**

64. No prior motion for the relief requested herein has been made by the Debtors to this or any other court.

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WHEREFORE, for the reasons set forth above and in the Montagner Declaration, the Debtors respectfully request that the Court (a) enter the Interim Order, substantially in the form attached hereto as Exhibit A, granting the relief requested herein and, after the Final Hearing, the Final Order, substantially in the form that shall be filed with the Court, and (b) grant such other and further relief as the Court may deem just and proper.

New York, New York  
Dated: May 14, 2012

/s/ Matthew S. Barr  
Paul S. Aronzon (*pro hac vice* pending)  
Matthew S. Barr  
Steven Z. Szanzer  
Karen Gartenberg  
MILBANK, TWEED, HADLEY & MCCLOY LLP  
1 Chase Manhattan Plaza  
New York, NY 10005-1413  
(212) 530-5000

*Proposed Counsel to Debtors  
and Debtors in Possession*

**Exhibit A**

**Proposed Interim Order**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

In re:	)	
	)	Chapter 11
LIGHTSQUARED INC., <i>et al.</i> ,	)	
	)	Case No. 12-_____ (___)
Debtors. <sup>1</sup>	)	
	)	Joint Administration Requested
	)	

**INTERIM ORDER (A) AUTHORIZING DEBTORS TO USE CASH COLLATERAL,  
(B) GRANTING ADEQUATE PROTECTION TO PREPETITION SECURED PARTIES,  
(C) MODIFYING AUTOMATIC STAY AND (D) SCHEDULING A FINAL HEARING**

Upon the motion (the "Motion")<sup>2</sup> of LightSquared Inc. and certain of its affiliates, as debtors and debtors in possession (collectively, "LightSquared" or the "Debtors") in the above-captioned chapter 11 cases (the "Chapter 11 Cases"), seeking entry of an interim order (the "Interim Order") and a final order (the "Final Order" and, together with the Interim Order, the "Cash Collateral Orders"), under sections 105, 361, 362, 363(c) and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as amended, the "Bankruptcy Code"), Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Rule 4001-2 of the Local Rules for the United States Bankruptcy Court for the Southern District of New York (the "Local Rules"), *inter alia*:

- (a) authorizing the use of Cash Collateral (within the meaning of section 363(a) of the Bankruptcy Code) of the Prepetition Secured

<sup>1</sup> The debtors in these chapter 11 cases, along with the last four digits of each debtor's federal or foreign tax or registration identification number, are: LightSquared Inc. (8845), LightSquared Investors Holdings Inc. (0984), One Dot Four Corp. (8806), One Dot Six Corp. (8763), SkyTerra Rollup LLC (N/A), SkyTerra Rollup Sub LLC (N/A), SkyTerra Investors LLC (N/A), TMI Communications Delaware, Limited Partnership (4456), LightSquared GP Inc. (6190), LightSquared LP (3801), ATC Technologies, LLC (3432), LightSquared Corp. (1361), LightSquared Finance Co. (6962), LightSquared Network LLC (1750), LightSquared Inc. of Virginia (9725), LightSquared Subsidiary LLC (9821), Lightsquared Bermuda Ltd. (7247), SkyTerra Holdings (Canada) Inc. (0631), SkyTerra (Canada) Inc. (0629) and One Dot Six TVCC Corp. (0040). The location of the debtors' corporate headquarters is 450 Park Avenue, Suite 2201, New York, NY 10022.

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion or in the Montagner Declaration, as applicable.

Parties (as defined herein) and providing adequate protection to the Prepetition Secured Parties for any diminution in value of their interests in the Cash Collateral, pursuant to sections 361 and 363 of the Bankruptcy Code;

- (b) vacating and modifying the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of this Interim Order, as limited pursuant hereto;
- (c) scheduling, pursuant to Bankruptcy Rule 4001, an interim hearing (the "Interim Hearing") to consider the relief requested in the Motion on an interim basis; and
- (d) scheduling, pursuant to Bankruptcy Rule 4001, a final hearing (the "Final Hearing") to consider the relief requested in the Motion on a final basis.

The Court having considered the Motion, the Declaration of Marc R. Montagner, Chief Financial Officer and Interim Co-Chief Operating Officer of LightSquared Inc., (A) in Support of First Day Pleadings and (B) Pursuant to Rule 1007-2 of Local Bankruptcy Rules for United States Bankruptcy Court for Southern District of New York, the exhibits and schedules attached thereto and the evidence submitted at the Interim Hearing; and notice of the Interim Hearing having been given in accordance with Bankruptcy Rules 4001(b) and (d) and 9014; and the Interim Hearing to consider the interim relief requested in the Motion having been held and concluded; and all objections, if any, to the interim relief requested in the Motion having been withdrawn, resolved or overruled by the Court; and it appearing to the Court that granting the interim relief requested is necessary to avoid immediate and irreparable harm to the Debtors and their estates pending the Final Hearing, and otherwise is fair and reasonable and in the best interests of the Debtors, their estates and their stakeholders, and is essential for the continued operation of the Debtors' businesses; and adequate protection being provided on account of the interests in and liens on property of the estates on which liens are granted; and after due deliberation and consideration, and for good and sufficient cause appearing therefor;

BASED UPON THE RECORD ESTABLISHED AT THE INTERIM HEARING BY THE DEBTORS, THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:

A. Petition Date. On May 14, 2012 (the "Petition Date"), each of the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the Southern District of New York (the "Court").

B. Debtors in Possession. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in these Chapter 11 Cases.

C. Jurisdiction/Venue. This Court has jurisdiction, pursuant to 28 U.S.C. §§ 157(b) and 1334, over the Chapter 11 Cases and property affected hereby. Consideration of the Motion constitutes a core proceeding under 28 U.S.C. § 157(b)(2). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

D. Committee Formation. As of the date hereof, the Office of the United States Trustee for the Southern District of New York (the "U.S. Trustee") has not yet appointed a statutory committee of unsecured creditors (the "Committee") in these Chapter 11 Cases pursuant to section 1102 of the Bankruptcy Code.

E. Debtors' Debt Structure.

(i) Prepetition Inc. Credit Facility. Pursuant to that certain Credit Agreement, dated as of July 1, 2011 (as amended, supplemented, amended and restated or otherwise modified from time to time, the "Prepetition Inc. Credit Agreement" and, together with all related credit and security documents, the "Prepetition Inc. Credit Documents"), between LightSquared Inc., as borrower, the subsidiary guarantors party thereto, namely One Dot Four



Corp., One Dot Six Corp. and One Dot Six TVCC Corp. (collectively, the “Prepetition Inc. Subsidiary Guarantors” and, together with LightSquared Inc., the “Inc. Obligor”), the lenders party thereto (collectively, the “Prepetition Inc. Lenders”) and U.S. Bank National Association, as successor administrative agent to UBS AG, Stamford Branch (in such capacity, the “Prepetition Inc. Agent”), the Prepetition Inc. Lenders provided term loans to or for the benefit of LightSquared Inc. (the “Prepetition Inc. Credit Facility”).

(ii) Prepetition Inc. Obligations. The Prepetition Inc. Credit Facility provided LightSquared Inc. with term loans in the aggregate principal amount of \$278,750,000. As of the Petition Date, an aggregate amount of approximately \$322,333,494 was outstanding under the Prepetition Inc. Credit Agreement (collectively, with any amounts paid, incurred or accrued prior to the Petition Date in accordance with the Prepetition Inc. Credit Documents (including unpaid principal, accrued and unpaid interest, any fees, expenses and disbursements), indemnification obligations and other charges, amounts and costs of whatever nature owing, whether or not contingent, whenever arising, accrued, accruing, due, owing or chargeable in respect of any of the Inc. Obligor’s obligations pursuant to the Prepetition Inc. Credit Documents, including all “Obligations” as described in the Prepetition Inc. Credit Agreement, the “Prepetition Inc. Obligations”).

(iii) Prepetition LP Credit Facility. Pursuant to that certain Credit Agreement, dated as of October 1, 2010 (as amended, supplemented, amended and restated or otherwise modified from time to time, the “Prepetition LP Credit Agreement” and, together with all related credit and security documents, the “Prepetition LP Credit Documents” and, together with the Prepetition Inc. Credit Documents, the “Prepetition Credit Documents”), between LightSquared LP, as borrower, LightSquared Inc. and the other parent guarantors party thereto,

namely LightSquared Investors Holdings Inc., LightSquared GP Inc. and TMI Communications Delaware, Limited Partnership (collectively, the “Prepetition LP Parent Guarantors”), the subsidiary guarantors party thereto, namely ATC Technologies, LLC, LightSquared Corp., LightSquared Inc. of Virginia, LightSquared Subsidiary LLC, SkyTerra Holdings (Canada) Inc. and SkyTerra (Canada) Inc. (collectively, the “Prepetition LP Subsidiary Guarantors” and, collectively with the Prepetition LP Parent Guarantors and LightSquared LP, the “LP Obligors”), the lenders party thereto (the “Prepetition LP Lenders” and, together with the Prepetition Inc. Lenders, the “Prepetition Lenders”), UBS AG, Stamford Branch, as administrative agent (in such capacity, and together with Wilmington Trust FSB,<sup>3</sup> the “Prepetition LP Agent” and, together with the Prepetition Inc. Agent, the “Prepetition Agents” and, together with the Prepetition Lenders, the “Prepetition Secured Parties”), and other parties thereto, the Prepetition LP Lenders provided term loans to or for the benefit of LightSquared LP (the “Prepetition LP Credit Facility” and, together with the Prepetition Inc. Facility, the “Prepetition Facilities”).

(iv) Prepetition LP Obligations. The Prepetition LP Credit Facility provided LightSquared LP with term loans in the aggregate principal amount of \$1,500,000,000. As of the Petition Date, an aggregate amount of approximately \$1,700,571,106 was outstanding under the Prepetition LP Credit Agreement (collectively, with any amounts paid, incurred or accrued prior to the Petition Date in accordance with the Prepetition LP Credit Documents (including unpaid principal, accrued and unpaid interest, any fees, expenses and disbursements), indemnification obligations and other charges, amounts and costs of whatever nature owing, whether or not contingent, whenever arising, accrued, accruing, due, owing or chargeable in

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<sup>3</sup> Wilmington Trust FSB serves as collateral trustee pursuant to that certain Collateral Trust Agreement, dated as of October 1, 2010 (as amended, supplemented, amended and restated or otherwise modified from time to time, the “LP Collateral Trust Agreement”), between LightSquared LP, UBS AG, Stamford Branch and Wilmington Trust FSB.

respect of any of the LP Obligors' obligations pursuant to the Prepetition LP Credit Documents, including all "Obligations" as described in the Prepetition LP Credit Agreement, the "Prepetition LP Obligations" and, together with the Prepetition Inc. Obligations, the "Prepetition Obligations").

(v) Prepetition Inc. Collateral. To secure the Prepetition Inc. Obligations, the Inc. Obligors granted to the Prepetition Inc. Agent first-priority security interests in and liens (the "Prepetition Inc. Liens") on (a) the One Dot Six Lease (as defined in the Prepetition Inc. Credit Documents), (b) the capital stock of each Prepetition Inc. Subsidiary Guarantor and (c) all proceeds and products of each of the foregoing (collectively, the "Prepetition Inc. Collateral").<sup>4</sup> The Prepetition Inc. Collateral does not include cash.

(vi) Prepetition LP Collateral. To secure the Prepetition LP Obligations, the LP Obligors granted to the Prepetition LP Agent first-priority security interests in and liens (the "Prepetition LP Liens" and, together with the Prepetition Inc. Liens, the "Prepetition Liens") on (a) substantially all of the assets of LightSquared LP and the Prepetition LP Subsidiary Guarantors, (b) the equity interests of LightSquared LP and the Prepetition LP Parent Guarantors (except LightSquared Inc.) and (c) the rights of LightSquared Inc. under and arising out of that certain Amended and Restated Cooperation Agreement, dated as of August 6, 2010 (as amended, supplemented, amended and restated or otherwise modified from time to time, the "Inmarsat Cooperation Agreement"), by and between LightSquared LP, SkyTerra

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<sup>4</sup> Previously, the Prepetition Inc. Credit Facility also was collateralized by the One Dot Four Lease (as defined in the Prepetition Inc. Credit Documents). However, such lease is no longer part of the collateral package given that such lease has been terminated (as further discussed in the Montagner Declaration).

(Canada) Inc., LightSquared Inc. and Inmarsat Global Limited (collectively, the “Prepetition LP Collateral” and, together with the Prepetition Inc. Collateral, the “Prepetition Collateral”).<sup>5</sup>

F. Findings Regarding the Use of Cash Collateral.

(i) Need for Use of Cash Collateral. The Debtors’ need to use Cash Collateral on an interim basis is immediate and critical to enable the Debtors to continue operations and to administer and preserve the value of their estates. The ability of the Debtors to engage in ongoing discussions with the Federal Communications Commission regarding the deployment of the Debtors’ network, to maintain business relationships with their vendors, suppliers and customers, including public safety agencies, to pay their employees and to otherwise finance their operations requires the use of Cash Collateral, the absence of which would result in immediate and irreparable loss or damage to the Debtors, their estates and their creditors. The Debtors do not have sufficient available sources of unencumbered cash to operate their businesses or maintain their properties in the ordinary course of business without the authorized use of Cash Collateral.

(ii) Use of Cash Collateral. The Debtors have agreed to use Cash Collateral, in each case in a manner consistent with the budget (as the same may be modified from time to time, the “Budget”), for (a) working capital and other general corporate purposes,

<sup>5</sup> The Prepetition LP Collateral does not include the following: (a) any permit or license issued by a Governmental Authority (as defined in the Prepetition LP Credit Agreement) or other agreement to the extent the terms thereof validly prohibit the creation by the pledgor thereof of a security interest in such permit, license or other agreement; (b) property subject to any purchase money or vendor financing if the contract or other agreement in which such lien is granted validly prohibits the creation of any other lien on such property; (c) property subject to any capital lease; (d) any intent-to-use trademark application to the extent a security interest therein would result in the loss by the pledgor thereof of any material rights therein; (e) certain deposit and securities accounts securing currency hedging or credit card vendor programs or letters of credit provided to vendors in the ordinary course of business; (f) equity interests in (i) excess of 66% in non-U. S. subsidiaries held by a US subsidiary, (ii) LightSquared Network LLC and (iii) any joint venture or similar entity to the extent the terms of such investment restrict such security interest; and (g) any consumer goods subject to the Canadian Security Agreement (as defined in the Prepetition LP Credit Agreement) (collectively, the “Prepetition LP Excluded Collateral”).

(b) permitted payment of costs of administration of the Chapter 11 Cases and (c) payment of such prepetition expenses as approved by this Court.

G. Adequate Protection. As a result of the use of the Cash Collateral authorized herein, the Prepetition Secured Parties are entitled to receive adequate protection pursuant to sections 361 and 363 of the Bankruptcy Code for any decrease in the value of their respective interest in the Cash Collateral resulting from the Debtors' use, sale or lease of the Cash Collateral during the Debtors' Chapter 11 Cases. As adequate protection, each of the Prepetition Agents will receive, solely to the extent of the diminution in value of their respective interests in the Prepetition Collateral, (a) the Adequate Protection Liens, (b) the 507(b) Claims and (c) the Adequate Protection Payments (each as defined herein).

H. Section 506(c). In light of (a) the Prepetition Inc. Agent and the Prepetition Inc. Lenders' agreement to subordinate their liens and section 507(b) claims to the Carve-Out and (b) the Prepetition LP Agent and the Prepetition LP Lenders' agreement to subordinate their liens and section 507(b) claims to the Carve-Out, the Prepetition Secured Parties are entitled to, subject to entry of a Final Order, a waiver of the provisions of section 506(c) of the Bankruptcy Code.

I. Good Cause; Immediate Entry. The relief requested in the Motion is necessary, essential and appropriate, and is in the best interests of and will benefit the Debtors, their estates, and their creditors and equity holders, as its implementation will, *inter alia*, provide the Debtors with the necessary liquidity to (a) minimize the disruption to the Debtors' businesses and ongoing operations, (b) preserve and maximize the value of the Debtors' estates for the benefit of all the Debtors' creditors and equity holders and (c) avoid immediate and irreparable harm to the Debtors, their estates, their creditors and equity holders, their businesses, their

employees and their assets. Thus, sufficient cause exists for immediate entry of this Interim Order pursuant to Bankruptcy Rule 4001(c)(2).

J. Notice. Notice of the Interim Hearing and the emergency relief requested in the Motion has been provided by the Debtors by electronic mail, facsimile, regular or overnight mail and/or hand delivery to (a) the U.S. Trustee, (b) the entities listed on the Consolidated List of Creditors Holding the 20 Largest Unsecured Claims filed pursuant to Bankruptcy Rule 1007(d), (c) counsel to the Prepetition Agents, (d) counsel to the ad hoc secured group of Prepetition LP Lenders, (e) counsel to Harbinger Capital Partners, (f) the Internal Revenue Service, (g) the United States Attorney for the Southern District of New York, (h) the Federal Communications Commission and (i) Industry Canada. The Debtors have made reasonable efforts to afford the best notice possible under the circumstances, and such notice is good and sufficient to permit the interim relief set forth in this Interim Order.

Based upon the foregoing findings and conclusions, the Motion and record before the Court with respect to the Motion, and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED that:

1. Motion Granted. The Motion is granted and the use of Cash Collateral on an interim basis is authorized, subject to the terms and conditions set forth in this Interim Order.

2. Objections Overruled. All objections to the use of Cash Collateral and the entry of the Interim Order, to the extent not withdrawn or resolved, are hereby overruled.

**Authorization To Use Cash Collateral**

3. Use of Cash Collateral. Subject to the terms and conditions of this Interim Order, and in accordance with the Budget, the Debtors are authorized to use Cash Collateral until the occurrence of a Termination Event (as defined herein) or as otherwise ordered by the Court

(the "Termination Date"). Nothing in this Interim Order shall authorize the disposition of any assets of the Debtors or their estates outside the ordinary course of business, or any Debtor's use of any Cash Collateral or proceeds resulting therefrom, except as permitted in this Interim Order and in accordance with the Budget.

4. Cash Management System. The Debtors shall maintain their cash management system as approved by the Court.

5. Adequate Protection Liens.

(a) Inc. Adequate Protection Liens. Pursuant to sections 361 and 363(e) of the Bankruptcy Code, as adequate protection of the interests of the Prepetition Inc. Agent and the Prepetition Inc. Lenders in the Cash Collateral against any diminution in value of such interests in the Cash Collateral on account of the Debtors' use of Cash Collateral, the Debtors hereby grant to the Prepetition Inc. Agent, for the benefit of itself and the Prepetition Inc. Lenders, effective and perfected upon the date of the Interim Order and without the necessity of the execution by the Debtors of security agreements, pledge agreements, mortgages, financing statements or other agreements, valid, binding, enforceable and perfected postpetition security interests in and liens on the Prepetition Inc. Collateral (the "Inc. Adequate Protection Liens"). For avoidance of doubt, the Prepetition Inc. Lenders shall not have an Inc. Adequate Protection Lien on any claims or causes of action under chapter 5 of the Bankruptcy Code or proceeds therefrom.

(b) LP Adequate Protection Liens. Pursuant to sections 361 and 363(e) of the Bankruptcy Code, as adequate protection of the interests of the Prepetition LP Agent and the Prepetition LP Lenders in the Cash Collateral against any diminution in value of such interests in the Cash Collateral on account of the Debtors' use of Cash Collateral, the

Debtors hereby grant to the Prepetition LP Agent, for the benefit of itself and the Prepetition LP Lenders, effective and perfected upon the date of the Interim Order and without the necessity of the execution by the Debtors of security agreements, pledge agreements, mortgages, financing statements or other agreements, valid, binding, enforceable and perfected postpetition security interest in and liens on the Prepetition LP Collateral (the “LP Adequate Protection Liens” and, together with the Inc. Adequate Protection Liens, the “Adequate Protection Liens”). For avoidance of doubt, the Prepetition LP Lenders shall not have a LP Adequate Protection Lien on any claims or causes of action under chapter 5 of the Bankruptcy Code or proceeds therefrom.

(c) Priority of Adequate Protection Liens. The Inc. Adequate Protection Liens shall be junior only to the Inc. Permitted Liens<sup>6</sup> and the Carve-Out. The LP Adequate Protection Liens shall be junior only to the LP Permitted Liens<sup>7</sup> and the Carve-Out.

(d) For purposes of this Interim Order, the Adequate Protection Liens shall be valid and enforceable against any trustee appointed in the Chapter 11 Cases, or any case under chapter 7 of the Bankruptcy Code upon conversion of any of the Chapter 11 Cases (the “Successor Cases”), or upon the dismissal of any of the Chapter 11 Cases or Successor Cases. No lien or interest avoided and preserved for the benefit of the estate pursuant to section 551 of

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<sup>6</sup> The Inc. Permitted Liens are liens otherwise permitted by the Prepetition Inc. Credit Documents, to the extent any such permitted liens were valid, properly perfected, non-avoidable and senior in priority to the Prepetition Inc. Liens as of the Petition Date. Nothing herein shall constitute a finding or ruling by this Court that any such Inc. Permitted Liens are valid, senior, perfected and non-avoidable. Moreover, nothing shall prejudice the rights of any party in interest, including, but not limited to, the Debtors, the Prepetition Inc. Agent, the Prepetition Inc. Lenders and the Committee, to challenge the validity, priority, perfection or extent of any such Inc. Permitted Lien and/or security interest.

<sup>7</sup> The LP Permitted Liens are liens otherwise permitted by the Prepetition LP Credit Documents, to the extent any such permitted liens were valid, properly perfected, non-avoidable and senior in priority to the Prepetition LP Liens as of the Petition Date. Nothing herein shall constitute a finding or ruling by this Court that any such LP Permitted Liens are valid, senior, perfected and non-avoidable. Moreover, nothing shall prejudice the rights of any party in interest, including, but not limited to, the Debtors, the Prepetition LP Agent, the Prepetition LP Lenders and the Committee, to challenge the validity, priority, perfection or extent of any such LP Permitted Lien and/or security interest.



the Bankruptcy Code shall be pari passu with or senior to the Prepetition Liens or the Adequate Protection Liens.

(e) The Adequate Protection Liens shall be subject to the reservation of rights set forth in paragraph 11 of this Interim Order.

6. Section 507(b) Claims.

(a) Inc. Section 507(b) Claim. As further adequate protection of the interests of the Prepetition Inc. Agent and the Prepetition Inc. Lenders in the Cash Collateral against any diminution in value of such interests in the Cash Collateral on account of the Debtors' use of Cash Collateral, the Prepetition Inc. Agent and the Prepetition Inc. Lenders are each hereby granted as and to the extent provided by section 507(b) of the Bankruptcy Code an allowed superpriority administrative expense claim in each of the Inc. Obligors' Chapter 11 Cases and Successor Cases (the "Inc. Section 507(b) Claim").

(b) LP Section 507(b) Claim. As further adequate protection of the interests of the Prepetition LP Agent and the Prepetition LP Lenders in the Cash Collateral against any diminution in value of such interests in the Cash Collateral on account of the Debtors' use of Cash Collateral, the Prepetition LP Agent and the Prepetition LP Lenders are each hereby granted as and to the extent provided by section 507(b) of the Bankruptcy Code an allowed superpriority administrative expense claim in each of the LP Obligors' Chapter 11 Cases and Successor Cases (the "LP Section 507(b) Claim" and, together with the Inc. Section 507(b) Claim, the "Section 507(b) Claims").

(c) Priority of the Section 507(b) Claims. Except as set forth herein, the Section 507(b) Claims shall have priority over all administrative expense claims and unsecured claims against the Inc. Obligors and the LP Obligors, as applicable, or their estates,

now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, administrative expenses of the kinds specified in or ordered pursuant to Bankruptcy Code sections 105, 326, 328, 330, 331, 365, 503(a), 503(b), 507(a), 507(b), 546(c), 546(d), 726 (to the extent permitted by law), 1113 and 1114; provided, however, that each of the Section 507(b) Claims shall be (i) junior to the Carve-Out and (ii) subject to the reservation of rights set forth in paragraph 11 of this Interim Order.

7. Adequate Protection Payments. As further adequate protection, subject to the reservation of rights set forth in paragraph 11 of this Interim Order, the Debtors are authorized and directed to provide adequate protection in the form of: (a) payment of all reasonable, actual and documented fees and expenses incurred or accrued by the Prepetition Inc. Agent under and pursuant to the Prepetition Inc. Agreement, including, without limitation, the reasonable, actual and documented fees and disbursements of counsel to the Prepetition Inc. Agent, whether incurred or accrued prior to or after the Petition Date and (b) payment of all reasonable, actual and documented fees and expenses incurred or accrued by the Prepetition LP Agent under and pursuant to the Prepetition LP Agreement, including, without limitation, the reasonable, actual and documented fees and disbursements of counsel to the Prepetition LP Agent, whether incurred or accrued prior to or after the Petition Date, in each case, subject to the rights of parties in interest pursuant to section 506(b) of the Bankruptcy Code (collectively, the "Adequate Protection Payments"). None of the fees and expenses payable pursuant to this paragraph shall be subject to separate approval by this Court (but this Court shall resolve any dispute as to the reasonableness of any such fees and expenses), and no recipient of any such payment shall be required to file any interim or final fee application with respect thereto. Subject to any *bona fide* dispute as to the reasonableness of such fees and expenses, the Debtors

shall pay the reasonable, actual and documented fees and expenses provided for in this section promptly (but no later than ten (10) business days) after invoices for such fees and expenses shall have been submitted to the Debtors, and the Debtors shall promptly provide copies of such invoices to the Committee (if any) and the U.S. Trustee. Any and all payments or proceeds remitted to the Prepetition Agents pursuant to the provisions of this Interim Order or any subsequent order of this Court shall be received free and clear of any claim, charge, assessment or other liability.

**Provisions Common to Use of  
Cash Collateral Authorizations**

8. Perfection of Adequate Protection Liens.

(a) The Prepetition Agents are hereby authorized, but not required, to file or record financing statements, intellectual property filings, mortgages, notices of lien or similar instruments in any jurisdiction, take possession of or control over, or take any other action in order to validate and perfect the liens and security interests granted to them hereunder. Whether or not the Prepetition Agents, on behalf of the Prepetition Inc. Lenders and the Prepetition LP Lenders, as applicable, shall, in their respective sole discretion, choose to file such financing statements, intellectual property filings, mortgages, notices of lien or similar instruments, take possession of or control over, or otherwise confirm perfection of the liens and security interests granted to them hereunder, such liens and security interests shall be deemed valid, perfected, allowed, enforceable, non-avoidable and not subject to challenge, dispute or subordination as of the date of entry of this Interim Order.

(b) A certified copy of this Interim Order may, in the discretion of the Prepetition Agents, respectively, be filed with or recorded in filing or recording offices in addition to or in lieu of such financing statements, mortgages, notices of lien or similar

instruments, and all filing offices are hereby authorized to accept such certified copy of this Interim Order for filing and recording.

(c) The Debtors are authorized and directed to execute and deliver to the Prepetition Agents all such agreements, financing statements, instruments and other documents as such Prepetition Agents may reasonably request to evidence, confirm, validate or perfect the Adequate Protection Liens. All such documents will be deemed to have been recorded and filed as of the Petition Date.

(d) In furtherance of the foregoing and without further approval of this Court, each Debtor is authorized to do and perform all acts to make, execute and deliver all instruments and documents and to pay all fees that may be reasonably required or necessary for the Debtors' performance hereunder.

9. Carve-Out.

(a) Carve-Out. As used in this Interim Order, the "Carve-Out" shall mean, upon the occurrence of the Termination Date, the following expenses: (i) all statutory fees payable to the Clerk of the Court and to the U.S. Trustee pursuant to 28 U.S.C. §1930(a); (ii) with respect to the information officer (the "Information Officer") to be appointed by the Ontario Superior Court of Justice (Commercial List) in Toronto, Ontario, Canada (the "Canadian Court") in connection with the proceedings commenced pursuant to the Companies' Creditors Arrangement Act (Canada) R.S.C. 1985, c. C-36, as amended, in the Canadian Court (the "Canadian Proceedings"), all fees and expenses required to be paid to the Information Officer and its counsel in connection with the Canadian Proceedings, which fees and expenses may be secured by a charging lien granted by the Canadian Court over the Debtors' assets in Canada, in the maximum amount of CDN \$200,000, (iii) all reasonable fees and expenses incurred by a

trustee under section 726(b) of the Bankruptcy Code not to exceed \$50,000 and (iv) the allowed and unpaid professional fees, expenses and disbursements incurred on or after the Termination Date by the Debtors and the Committee for any professionals retained by final order of the Court (which order has not been vacated or stayed, unless the stay has been vacated) by the Debtors and the Committee under sections 327, 328 or 1103(a) of the Bankruptcy Code (the “Chapter 11 Case Professionals”) in an aggregate amount not to exceed \$6 million plus such allowed fees, expenses and disbursements incurred prior to the Termination Date, but which remain unpaid as of the Termination Date, whether approved by the Court before or after the Termination Date (collectively, the “Allowed Professional Fees”).

(b) Payment of Allowed Professional Fees Prior to the Termination Date. Prior to the occurrence of the Termination Date, the Debtors shall be permitted to pay Allowed Professional Fees. The amounts paid shall not reduce the Carve-Out.

10. Payment of Compensation. Nothing in this Interim Order shall be construed as a consent to the allowance of any professional fees or expenses of any Chapter 11 Case Professionals or shall affect the right of the Prepetition Agents and/or the Prepetition Lenders to object to the allowance and payment of such fees and expenses.

11. Reservation of Certain Debtor and Third-Party Rights and Bar of Challenges and Claims. Nothing in this Interim Order shall prejudice whatever right, if any, the Debtors, any statutory committee(s) or any other party in interest with requisite standing may have to seek (a) to object to or to challenge (i) the validity, extent, priority or perfection of the mortgage, security interests and liens of the Prepetition Inc. Agent with respect to the Prepetition Inc. Collateral or the Prepetition LP Agent with respect to the Prepetition LP Collateral, and (ii) the validity, allowability, priority, full-secured status or amount of the Prepetition Inc.

Obligations or the Prepetition LP Obligations or (b) to bring suit against the Prepetition Secured Parties in connection with or related to the Prepetition Credit Documents, or the actions or inactions of Prepetition Secured Parties arising out of or related to the Prepetition Credit Documents.

12. Termination of Use of Cash Collateral. The authorization to use Cash Collateral will terminate if there is entered (a) an order dismissing any of the Chapter 11 Cases of the Debtors with material assets or converting such Chapter 11 Cases to cases under chapter 7, (b) an order appointing a chapter 11 trustee in any of the Chapter 11 Cases of the Debtors with material assets that is not stayed following entry or (c) an order staying, reversing or vacating, in a manner materially adverse to the Prepetition Secured Parties and without prior consent of the applicable Prepetition Secured Party, this Interim Order or the Final Order (each of the foregoing, a "Termination Event").

13. No Third Party Rights. Except as explicitly provided for herein, this Interim Order does not create any rights for the benefit of any third party, creditor, equity holder or any direct, indirect or incidental beneficiary.

14. Limitation on Charging Expenses Against Collateral. Subject to entry of the Final Order, except to the extent of the Carve-Out with respect to the Prepetition Collateral, no expenses of administration of these Chapter 11 Cases or any future proceeding that may result therefrom, including liquidation in bankruptcy or other proceedings under the Bankruptcy Code, shall be charged against or recovered from the Prepetition Collateral pursuant to section 506(c) of the Bankruptcy Code or any similar principle of law or in equity, without the prior written consent of Prepetition Agents, and no such consent shall be implied from any other action or inaction by the Prepetition Secured Parties.

15. Joint and Several Liability. Nothing in this Interim Order shall be construed to constitute a substantive consolidation of any of the Debtors' estates, it being understood, however, that the Inc. Obligors and the LP Obligors shall be jointly and severally liable for their respective obligations hereunder.

16. Reservation of Rights of Prepetition Secured Parties. Under the circumstances and given that the adequate protection provided herein is consistent with the Bankruptcy Code, this Court finds that the adequate protection provided herein is reasonable and sufficient to protect the interests of the Prepetition Secured Parties. Notwithstanding any other provision hereof, the grant of adequate protection to the Prepetition Secured Parties pursuant hereto is without prejudice to the right of the Prepetition Agents to seek modification of the grant of adequate protection provided hereby so as to provide different or additional adequate protection. Except as expressly provided herein, nothing contained in this Interim Order (including without limitation, the authorization to use any Cash Collateral) shall impair or modify any rights, claims or defenses available in law or equity to the Prepetition Secured Parties. Entry of this Interim Order is without prejudice to any and all rights of the Committee, the U.S. Trustee and any other party in interest with respect to the terms and approval of the Final Order and any other position which any party in interest deems appropriate to raise in the Debtors' Chapter 11 Cases.

17. Modification of the Automatic Stay. The automatic stay imposed under section 362(a) of the Bankruptcy Code is hereby modified as necessary to effectuate all of the terms and provisions of this Interim Order, including, without limitation, to (a) permit the Debtors to grant the Adequate Protection Liens and the 507(b) Claims, (b) permit the Debtors to perform such acts as the Prepetition Agents may request in their sole discretion to assure the

perfection and priority of the liens granted herein, (c) permit the Debtors to incur all liabilities and obligations to the Prepetition Secured Parties under this Interim Order and (d) authorize the Debtors to pay, and the Prepetition Agents to retain and apply, payments made in accordance with the terms of this Interim Order.

18. Master Proofs of Claim.

(a) To facilitate the processing of claims, to ease the burden upon this Court and to reduce any unnecessary expense to the Debtors' estates, subject to entry of the Final Order, (i) the Prepetition Inc. Agent is authorized (but not required) to file a single master proof of claim (a "Master Proof of Claim"), on behalf of itself and the Prepetition Inc. Lenders, on account of their claims arising under the Prepetition Inc. Credit Agreement against LightSquared Inc. only, and (ii) the Prepetition LP Agent is authorized (but not required) to file a Master Proof of Claim, on behalf of itself and the Prepetition LP Lenders, on account of their claims arising under the Prepetition LP Credit Agreement against LightSquared LP only.

(b) Upon filing of a Master Proof of Claim by the Prepetition Inc. Agent and/or the Prepetition LP Agent, as applicable, the Prepetition Inc. Agent and/or the Prepetition LP Agent, as applicable, and each of their respective successors and assigns shall be deemed to have filed a proof of claim in the amount set forth opposite its name therein in respect of its claims against each of the Inc. Obligors and the LP Obligors, as applicable, arising under the Prepetition Inc. Agreement and the Prepetition LP Agreement, as applicable. The claims (as defined in section 101 of the Bankruptcy Code) of the Prepetition Inc. Agent and/or the Prepetition LP Agent, as applicable, the Prepetition Inc. Lenders and/or the Prepetition LP Lenders, as applicable, and each of their respective successors and assigns named in the Master Proof of Claim shall be allowed as if each such entity had filed a separate proof of claim in each



of the Chapter 11 Cases of the Inc. Obligors and the LP Obligors, as applicable, in the amount set forth in the Master Proof of Claim; provided, however, that the Prepetition Inc. Agent and/or the Prepetition LP Agent, as applicable, may, but shall not be required to, amend the Master Proof of Claim from time to time to, among other things, reflect a change in the holders of the claims set forth therein or a reallocation among such holders of the claims asserted therein resulting from any transfer of any such claims.

(c) The provisions set forth in paragraphs (a) and (b) above are intended solely for the purpose of administrative convenience and, except to the extent set forth herein or therein, neither the provisions of this paragraph nor the Master Proof of Claim shall affect the substantive rights of the Debtors, the Committee, the Prepetition Agents, the other Prepetition Secured Parties or any other party in interest or their respective successors in interest, including without limitation, the right of each Prepetition Secured Party (or its successor in interest) to vote separately on any plan of reorganization proposed in these Chapter 11 Cases.

19. Binding Effect of Interim Order. Immediately upon execution by this Court, the terms and provisions of this Interim Order shall become valid and binding upon and inure to the benefit of the Debtors, the Prepetition Secured Parties, the Committee, any other court-appointed committee appointed in the Chapter 11 Cases, all other creditors of the Debtors and all other parties in interest and their respective successors and assigns, including any trustee or other fiduciary hereafter appointed in any of the Chapter 11 Cases, any Successor Cases or upon the dismissal of any Chapter 11 Case or Successor Case.

20. Survival. The provisions of this Interim Order and any actions taken pursuant hereto shall survive entry of any order which may be entered: (a) confirming any plan of reorganization in any of the Chapter 11 Cases; (b) converting any of the Chapter 11 Cases to a

case under chapter 7 of the Bankruptcy Code; (c) dismissing any of the Chapter 11 Cases or any Successor Cases; or (d) pursuant to which this Court abstains from hearing any of the Chapter 11 Cases or Successor Cases.

21. Final Hearing. The Final Hearing to consider entry of the Final Order is scheduled for \_\_\_\_\_, 2012 at \_\_\_\_\_.m. (prevailing Eastern time) before this Court. On or before \_\_\_\_\_, 2012, the Debtors shall serve, by United States mail, first-class postage prepaid, notice of the entry of this Interim Order and of the Final Hearing (the "Final Hearing Notice"), together with copies of this Interim Order and the Motion, on: (a) the parties having been given notice of the Interim Hearing, (b) any party which has filed prior to such date a request for notices with this Court and (c) counsel for the Committee. The Final Hearing Notice shall state that any party in interest objecting to the entry of the proposed Final Order shall file written objections with the Clerk of Court no later than on \_\_\_\_\_, 2012 at 4:00 p.m. (prevailing Eastern time), which objections shall be served so as to be received on or before such date by: (a) LightSquared Inc., 450 Park Avenue, Suite 2201, New York, NY 10022, Attn: Marc R. Montagner and Curtis Lu, Esq., (b) proposed counsel to the Debtors, Milbank, Tweed, Hadley & McCloy LLP, 1 Chase Manhattan Plaza, New York, NY 10005, Attn: Matthew S. Barr, Esq. and Karen Gartenberg, Esq., (c) the Office of the United States Trustee for the Southern District of New York, (d) counsel to the Committee, (e) counsel to the Prepetition Inc. Agent, Akin Gump Strauss Hauer & Feld LLP, One Bryant Park, New York, NY 10036, Attn: Michael S. Stamer, Esq. and Philip C. Dublin, Esq., (f) counsel to the Prepetition LP Agent, Latham & Watkins LLP, 885 Third Avenue, New York, NY 10022, Attn: Melissa S. Alwang, Esq. and (g) counsel to the ad hoc secured group of Prepetition LP Lenders, White & Case LLP, 1155 Avenue of the Americas, New York, NY 10036, Attn: Thomas E. Lauria, Esq.

22. Nunc Pro Tunc Effect of this Interim Order. This Interim Order shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 and shall take effect and be enforceable *nunc pro tunc* to the Petition Date immediately upon execution thereof.

23. Retention of Jurisdiction. The Court has and will retain jurisdiction to enforce this Interim Order according to its terms.

New York, New York

Date: \_\_\_\_\_, 2012

\_\_\_\_\_  
United States Bankruptcy Judge

**Schedule 1**

**Budget**

## Summary - Inc.

Dollars in thousands

	0020	0021	0022	0023	0024	0025	0026	0027	0028	0029	0030	0031	0032	13 week
	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Total
ee Beginning	5/14/12	5/21/12	5/28/12	6/4/12	6/11/12	6/18/12	6/25/12	7/2/12	7/9/12	7/16/12	7/23/12	7/30/12	8/6/12	5/18/12
ee Ending	5/18/12	5/25/12	6/1/12	6/8/12	6/15/12	6/22/12	6/29/12	7/6/12	7/13/12	7/20/12	7/27/12	8/3/12	8/10/12	8/10/12

**OPERATING CASH FLOW****Sources**

Satellite Revenue	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Interest Income	0	0	0	0	0	0	0	0	0	0	0	0	0	5
	0	0	0	0	0	0	0	0	0	0	0	0	0	5

**Uses**

Satellite Related	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Contract Settlement	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Spectrum	-	10	-	10	-	10	-	10	-	6,510	-	10	-	6,560
Contract Development	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Debt	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Patrol	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Facilities	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Insurance	-	-	-	-	111	-	37	-	37	-	37	-	37	260
Travel	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Other Items	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Legal Professional Fees	-	-	-	-	-	-	-	-	20	-	-	20	-	40
Regulatory Professional Fees	-	-	-	-	-	-	-	-	-	-	-	-	-	-
	-	10	-	10	111	10	37	10	57	6,510	37	30	37	6,860
	0	(10)	0	(10)	(111)	(10)	(37)	(10)	(57)	(6,510)	(37)	(30)	(37)	(6,855)

**NON-OPERATING CASH FLOW****Uses**

Contingency	-	1	-	1	6	1	2	1	3	1	2	2	2	18
Debt Service	-	-	-	-	-	-	-	-	-	-	-	-	-	-

**Contract Related**

Contract Filing Fees	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Contract Settlement	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Contract Professional Fees	86	-	-	-	-	-	-	-	820	-	-	340	-	1,246
	86	1	-	1	6	1	2	1	823	1	2	342	2	1,264

**Net Change**

	(86)	(10)	0	(10)	(117)	(10)	(39)	(10)	(879)	(6,510)	(39)	(37)	(39)	(8,120)
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Beginning Cash Balance - 0000

Ending Cash Balance - 0000

15/260	15/174	15/164	15/164	15/154	15/037	15/027	14/989	14/979	14/099	7/589	7/550	7/179	15/260
15/174	15/164	15/164	15/154	15/037	15/027	14/989	14/979	14/099	7/589	7/550	7/179	7/140	7/140

## Summary - LP

Dollars in thousands

	0020	0021	0022	0023	0024	0025	0026	0027	0028	0029	0030	0031	0032	13 week
	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Total
Beginning	5/14/12	5/21/12	5/28/12	6/4/12	6/11/12	6/18/12	6/25/12	7/2/12	7/9/12	7/16/12	7/23/12	7/30/12	8/6/12	5/18/12
Ending	5/18/12	5/25/12	6/1/12	6/8/12	6/15/12	6/22/12	6/29/12	7/6/12	7/13/12	7/20/12	7/27/12	8/3/12	8/10/12	8/10/12

**OPERATING CASH FLOW****Sources**

Satellite Revenue	83	1,429	950	373	262	406	1,743	582	454	406	900	1,136	454	9,405
Interest Income	4	4	4	4	4	4	4	6	6	5	5	5	5	64
	88	1,433	954	377	267	410	1,747	588	460	411	906	1,139	460	9,469

**Uses**

Satellite Related	-	-	-	-	-	-	(2,361)	-	-	-	-	-	862	(1,499)
Goodwill Asset	-	-	-	-	1,500	-	-	-	380	-	-	3,400	-	5,280
Spectrum	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Debt Redemption	7	70	-	-	44	188	-	241	403	83	38	38	38	1,147
Debt	-	-	-	-	-	120	636	-	-	-	-	-	-	756

**Other Operating**

Payroll	585	585	585	850	583	3,793	485	4,893	482	480	480	749	482	15,033
Facilities	114	391	5	62	135	391	57	62	237	391	6	19	43	1,915
Insurance	48	73	104	113	196	78	149	483	541	68	75	113	171	2,212
Travel	20	20	20	68	20	20	20	68	20	20	20	20	53	389
Other Items	355	489	148	165	455	528	168	155	485	518	158	78	109	3,811
Legal Professional Fees	-	-	-	-	647	-	-	-	1,131	-	-	-	1,131	2,908
Regulatory Professional Fees	-	-	-	-	1,208	-	-	-	1,339	-	-	-	1,284	3,830
	1,129	1,628	862	1,258	4,787	5,117	1,846	5,855	5,065	1,560	778	4,417	4,172	35,781
Operating Cash Flow	(1,041)	(1,950)	92	(881)	(4,521)	(4,707)	2,593	(5,267)	(4,605)	(1,149)	128	(3,048)	(3,713)	(26,312)

**NON-OPERATING CASH FLOW****Uses**

Contingency	56	81	43	63	164	250	44	293	234	78	39	51	166	1,562
Debt Certificate	-	-	-	-	-	-	-	-	-	-	-	-	-	-

**Bankruptcy Related**

Trustee Filing Fees	10	-	-	-	-	-	-	-	-	-	100	-	-	110
Debt Settlement	22	-	-	-	-	-	-	-	-	-	-	-	-	22
Bankruptcy Professional Fees	-	-	-	-	-	-	-	-	5,067	-	-	-	3,411	8,478
	88	81	43	63	164	250	44	293	5,301	78	139	51	3,576	10,172

**Net Change in Cash**

Beginning Cash Balance - Good	(192,345)	(191,216)	(190,940)	(190,988)	(190,045)	(185,360)	(180,403)	(182,952)	(177,393)	(167,486)	(166,260)	(166,249)	(163,150)	(192,345)
Ending Cash Balance - Good	(191,216)	(190,940)	(190,988)	(190,045)	(185,360)	(180,403)	(182,952)	(177,393)	(167,486)	(166,260)	(166,249)	(163,150)	(155,862)	(155,862)

Exhibit "G" to the Affidavit of Elizabeth Creary,  
sworn before me this 3<sup>rd</sup> day of June, 2012.



Commissioner for Taking Affidavits

Michael Colin Anderson,  
a Commissioner, etc., Province of  
Ontario, while a Student-at-Law.  
Expires May 8, 2015

Paul S. Aronzon (*pro hac vice* pending)  
Matthew S. Barr  
Steven Z. Szanzer  
Karen Gartenberg  
MILBANK, TWEED, HADLEY & M<sup>C</sup>CLOY LLP  
One Chase Manhattan Plaza  
New York, NY 10005-1413  
(212) 530-5000

*Proposed Counsel to Debtors and Debtors in Possession*

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

In re:	)	
	)	Chapter 11
LIGHTSQUARED INC., <i>et al.</i> ,	)	
	)	Case No. 12-_____ (___)
Debtors. <sup>1</sup>	)	Joint Administration Requested
	)	

**MOTION FOR ENTRY OF AN ORDER AUTHORIZING LIGHTSQUARED LP  
TO ACT AS FOREIGN REPRESENTATIVE PURSUANT TO 11 U.S.C. § 1505**

LightSquared Inc. and certain of its affiliates, as debtors and debtors in possession (collectively, "LightSquared" or the "Debtors") in the above-captioned chapter 11 cases (the "Chapter 11 Cases"), file this motion (the "Motion") for entry of an order (the "Order") authorizing LightSquared LP ("LSLP") to act as the foreign representative on behalf of the Debtors' estates in any judicial or other proceedings in a foreign country, including the Canadian Proceedings (as defined herein). In support of this Motion, the Debtors submit the Declaration

<sup>1</sup> The debtors in these chapter 11 cases, along with the last four digits of each debtor's federal or foreign tax or registration identification number, are: LightSquared Inc. (8845), LightSquared Investors Holdings Inc. (0984), One Dot Four Corp. (8806), One Dot Six Corp. (8763), SkyTerra Rollup LLC (N/A), SkyTerra Rollup Sub LLC (N/A), SkyTerra Investors LLC (N/A), TMI Communications Delaware, Limited Partnership (4456), LightSquared GP Inc. (6190), LightSquared LP (3801), ATC Technologies, LLC (3432), LightSquared Corp. (1361), LightSquared Finance Co. (6962), LightSquared Network LLC (1750), LightSquared Inc. of Virginia (9725), LightSquared Subsidiary LLC (9821), Lightsquared Bermuda Ltd. (7247), SkyTerra Holdings (Canada) Inc. (0631), SkyTerra (Canada) Inc. (0629) and One Dot Six TVCC Corp. (0040). The location of the debtors' corporate headquarters is 450 Park Avenue, Suite 2201, New York, NY 10022.





of Marc R. Montagner, Chief Financial Officer and Interim Co-Chief Operating Officer of LightSquared Inc., (A) in Support of First Day Pleadings and (B) Pursuant to Rule 1007-2 of Local Bankruptcy Rules for United States Bankruptcy Court for Southern District of New York (the “Montagner Declaration”). In further support of this Motion, the Debtors respectfully state as follows:

### **Jurisdiction**

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).
2. Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The statutory bases for the relief requested herein are sections 105 and 1505 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as amended, the “Bankruptcy Code”).

### **Background**

#### **A. Introduction**

4. On May 14, 2012 (the “Petition Date”), each of the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code.
5. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Debtors have requested the joint administration of these Chapter 11 Cases for procedural purposes. No trustee, examiner or statutory committee of unsecured creditors has been appointed in these Chapter 11 Cases.

**B. Overview of Debtors' Businesses**

*(i) Debtors' Satellite Business*

6. LightSquared, a mobile communications company with headquarters in New York and incorporated in Delaware in 1985, is the first private company to offer mobile satellite services throughout North America, initially using two geostationary satellites<sup>2</sup> as well as a portion of the electromagnetic spectrum known as the L-Band. Since its first satellite became operational in 1996, LightSquared has provided satellite communications services – which include data, voice, fax and dispatch services – to companies and federal, state, provincial, local and foreign governments that are wholesale purchasers of bandwidth power and capacity, resellers of telephony, data and dispatch services and retail voice users. For example, LightSquared provides services to public safety officers, emergency responders and the United States military. Today, LightSquared's mobile satellite business generates approximately \$30 million in annual revenue and provides service to approximately 300,000 end users.

7. LightSquared launched SkyTerra-1 in November 2010, which, as mentioned above, is one of two next-generation satellites that have been constructed by LightSquared. LightSquared's next-generation satellites are two of the most powerful mobile satellites ever constructed. Each is equipped with a 22 meter (75 foot) diameter antenna, which provides ten (10) times better performance than that provided by LightSquared's prior satellites. The satellites have the capability of forming up to five hundred (500) beams over North America

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<sup>2</sup> These two first-generation satellites, known as MSAT-1 and MSAT-2, currently provide services to some existing customers, and have also, since March 10, 2012, provided emergency back-up service to all of LightSquared's customers due to a solar flare(s), which temporarily disabled the SkyTerra-1 satellite, one of LightSquared's two next-generation satellites. LightSquared is currently finalizing the assessment of the solar flare(s) prior to transitioning customers back to that satellite for service. LightSquared will also rely upon the MSAT system until such time that SkyTerra-2, LightSquared's second next-generation satellite, is launched. Both MSAT-1 and MSAT-2 are approaching the ends of their useful lives and are part of the Prepetition LP Collateral (as defined below). They have, in the past, experienced anomalies and Solid State Power Amplifier failures and neither currently operates at full capacity.

and can operate with devices that are as small as standard cell phones or USB modems. The SkyTerra-1 and SkyTerra-2 satellite networks utilize state-of-the art ground-based beam forming systems. Such systems allow flexibility in beam shapes, number, bandwidth allocation and beam power allocation, which is unprecedented in prior mobile satellite systems. SkyTerra-1 is fully operational, and SkyTerra-2 is constructed and stored in preparation for launch.

8. LightSquared currently operates three (3) lines of business, including Mobile Satellite Communications (“MSAT”), Mobile Data Services (“MDS”) and Private Network Carriers (“PNC”) through a wholesale business model whereby its partners bill the end users, and LightSquared bills its partners at a wholesale rate. Through these three lines of business, LightSquared has over fifteen wholesale partners, including, but not limited to, Comtech Mobile Datacom Corporation, XATA Corporation, SkyBitz, Outerlink, Omnistar, Wireless Matrix, EMS Technologies/Honeywell, Network Innovations, Glentel, Astrum, Infosat, Inmosat and International Satellite Service, that collectively support approximately 300,000 subscribers across several markets throughout North America.

9. MSAT Business. LightSquared’s MSAT business provides circuit-switched voice, low data rate services and push-to-talk (“PTT”) services, which are sold through LightSquared’s authorized wholesale service providers and are utilized by a variety of governmental agencies at the federal, state and local level, as well as by various markets in the enterprise space. LightSquared is currently the only commercial satellite operator in North America offering PTT service. LightSquared’s two-way, PTT radio service over satellite is a popular option for communications in remote areas or during emergency situations, and its dispatch or two-way radio style is familiar to the public safety community and ideal for command

and control. Thus, in the public/government sector, LightSquared's MSAT business serves end users in public safety, emergency management and defense as well as health and education.

10. Specifically, LightSquared's PTT products and services were utilized by public safety and education (such as the University of North Carolina Wilmington) end users during, and in preparation for, several disasters, including Hurricane Katrina (Mississippi Department of Wildlife, Fisheries and Parks), Hurricane Gustav (several federal, state and local agencies), Hurricane Irene (DE State Police, MD Emergency Management Agency), Kentucky Ice Storms (Kentucky Department for Public Health) and, most recently, the tornadoes in Kentucky (Kentucky Department for Public Health). In all of these disasters, LightSquared's mobile satellite service, with its PTT capability, provided instant communications for public safety agencies and a means for interoperability among disparate agencies.

11. Moreover, in recent years, the United States has faced a variety of costly natural and man-made disasters, including hurricanes, tornadoes, wildfires, flooding and earthquakes, as well as the 9/11 terrorist attacks, which have amplified the need for dependable communications that enable organizations to communicate with each other. Often, the only means available to the public safety/emergency responder community to do so is through mobile satellite communications. To address these needs, federal, state and local agencies have voluntarily banded together with LightSquared in a public-private partnership to create the Satellite Mutual Aid Radio Talkgroup ("SMART") program – enabling nationwide and regional interoperability at no additional cost to LightSquared users. Since SMART is a feature provided at no cost to LightSquared's public safety end users, the SMART program, incorporating such SMART feature, is a cost-efficient program that delivers measurable return on investment – swift and reliable communications interoperability for emergency response and contingency operations. With the

rapid growth of SMART, public safety and emergency responders have a resource that enables communications interoperability that is immediate, reliable and always available.

12. It is thus no surprise that the nationwide and regional SMART end users include, among others, (a) JSMART, utilized by public safety agencies across the country and managed by the DOJ Wireless Management, (b) LSMART, utilized nationally by law enforcement and managed by the U.S. Marshals Service, (c) USMART, utilized by urban search and rescue teams across the United States and managed by the Montgomery County, Maryland Fire & Rescue Service, (d) NE SMART, utilized by the northeast states and managed by the Connecticut State Police, (e) WSMART, utilized by the western states and managed by the California Emergency Management Agency and (f) MWSMART, utilized by the midwest states and managed by the Indiana Department of Homeland Security.

13. The MSAT line of business also serves various markets in the enterprise space, including maritime, oil and gas, utilities, transportation, media and recreation. In the maritime vertical market, especially in Alaska, fishermen rely on LightSquared's PTT capability while at sea in extreme environments, especially north of 60° toward the Aleutians. Additionally, enterprise users in the oil and gas industry rely on LightSquared's mobile satellite service in the Gulf region to communicate with workboats and on oil rigs/platforms for instantaneous communication between rigs/boats and back to operations centers on the coast.

14. MDS Business. LightSquared's second line of business, MDS, is a low data rate service offering used primarily for applications such as fleet and load management, email, vehicle tracking, two-way messaging and broadcast messaging. Like LightSquared's MSAT services, MDS is sold through LightSquared's authorized wholesale service providers and is utilized by various end users. One such end user, the New Mexico State Police, utilizes MDS in

police cruisers to enable officers to perform database lookups on ruggedized laptops in remote areas where no terrestrial communications exist and LightSquared's satellite service is the only means by which to meet this critical data communications requirement in an effective manner.

15. PNC Business. Finally, LightSquared's third line of business, PNC, enables customers to lease bandwidth from LightSquared over which they offer custom satellite data solutions (typically, asset tracking services for truck and rail) to a wide variety of end users. In connection therewith, LightSquared's PNC customers are responsible for developing a custom air interface, providing hub, end-user equipment and servicing end users. One of LightSquared's largest PNC customers, SkyBitz, provides asset tracking services through LightSquared's satellite capacity for Tri State Motor Transit Co., an end user that hauls high-risk cargo such as munitions, explosives and nuclear fuel bound for sites from coast to coast. LightSquared's satellite capacity ensures that trailers hauling this cargo are constantly tracked where terrestrial communications do not exist. Another PNC customer, Comtech Mobile Datacom Corp., provides service to the United States military, utilizing LightSquared's service in North America in connection with the Blue Force Tracking system that tracks all military assets.

*(ii) Debtors' Terrestrial Component of Satellite Business*

16. In the late 1990s, LightSquared determined that adding a terrestrial (*i.e.*, land-based) component to its satellite system would optimize the use of the L-Band and provide a communications system with superior reliability and coverage. By combining a nationwide system of terrestrial base stations with one of the largest commercial satellites ever launched – the state-of-the-art SkyTerra-1 – LightSquared could offer coverage of a satellite system in North America and the capacity of a next-generation, high-speed wireless broadband network.

17. LightSquared determined that a significant market opportunity was created for a wholesale-only, 4th Generation Long Term Evolution (“4G LTE”) wireless broadband network due to, among other things, (a) the proliferation of new mobile devices, such as smartphones and tablets, which accelerated demand for ubiquitous, on-the-go data-rich Internet services, (b) limited wireless network capacity available to support increased data usage and (c) substantial costs and barriers to entry preventing smaller carriers and new operators from deploying nationwide 4G LTE networks. LightSquared believed that many wireless operators would face significant challenges meeting network demands due to spectrum availability and capital shortages because the wireless communications industry was (and currently remains) dominated by a small number of established, national wireless carriers and current levels of data transmission already utilized significant network capacity. This led LightSquared to conclude that some carriers would be unable to deploy their own 4G LTE networks in a timely and cost-effective manner, while others would be unable to install enough capacity to serve the needs of their existing customer bases, thereby resulting in such carriers being unable to offer comparable service quality and speeds on a cost-competitive basis with the largest national carriers. To address this imbalance, LightSquared’s strategy was, and currently remains, to enable a broad range of potential wholesale customers to launch competitive retail wireless service offerings using wholesale capacity on LightSquared’s 4G LTE network.

18. Accordingly, LightSquared initiated the process of building the only 4G LTE open wireless broadband network that incorporates both terrestrial (*i.e.*, land-based) and satellite coverage throughout North America and offers people the speed, value and reliability of universal connectivity, wherever they may be located. The satellite component of the system would provide service to the population in areas not otherwise covered by terrestrial systems.

Through its wholesale-only business model, entities without their own wireless network, or that have limited geographic coverage or spectrum, will be able to market and sell their own devices, applications and services using the LightSquared network at a competitive price and without retail competition from LightSquared. This, in turn, will enable manufacturers and retailers to provide a solution for consumers, while creating new customer relationships and ongoing revenue streams for themselves. LightSquared's partners will also be able to develop their own devices, applications and services on the LightSquared network because it is a completely open network system.

19. As of the Petition Date, the Debtors employed approximately 168 people in the United States and Canada. As of February 29, 2012, the Debtors had approximately \$4.48 billion in assets (book value) and \$2.29 billion in liabilities.

**C. Additional Information**

20. Additional information regarding the Debtors' businesses, assets, capital structure and the circumstances leading to the filing of these Chapter 11 Cases is set forth in the Montagner Declaration, which was filed contemporaneously herewith.

**Appointment of Foreign Representative**

21. As further described in the Montagner Declaration, in addition to their operations in the United States, the Debtors also have certain assets and limited operations in Canada. Three of the Debtors are incorporated in Canada: SkyTerra Holdings (Canada) Inc., SkyTerra (Canada) Inc. and LightSquared Corp. (collectively, the "Canadian Debtors"), each of which is a subsidiary of LSLP. LSLP, as the proposed Foreign Representative (defined below), will shortly seek ancillary relief in Canada on behalf of all of the Debtors, pursuant to the Companies' Creditors Arrangement Act (Canada) R.S.C. 1985, c. C-36 as amended (the "CCAA") in the Ontario Superior Court of Justice (Commercial List) (the "Canadian Court") in



Toronto, Ontario, Canada. The purpose of the ancillary proceedings (the “Canadian Proceedings”) is to request that the Canadian Court recognize these Chapter 11 Cases as a “foreign main proceeding” under the applicable provisions of the CCAA in order to, among other things, protect the Debtors’ assets and operations in Canada.

22. To commence the Canadian Proceedings, the Debtors need authority for a Debtor entity to act as the “foreign representative”<sup>3</sup> on behalf of the Debtors’ estates (the “Foreign Representative”) and, therefore, the Debtors seek to appoint LSLP as such Foreign Representative. Specifically, section 46 of the CCAA provides:

- a. **Application for recognition of a foreign proceeding.** — A foreign representative may apply to the court for recognition of the foreign proceeding in respect of which he or she is a foreign representative.
- b. **Documents that must accompany application.** — . . . the application must be accompanied by. . . (b) a certified copy of the instrument, however designated, authorizing the foreign representative to act in that capacity or a certificate from the foreign court affirming the foreign representative’s authority to act in that capacity . . . .

CCAA, R.S.C., Ch. C-36, § 46 (1985) (Can.).

23. For LSLP to be recognized as the Foreign Representative of the Debtors in the Canadian Proceedings, and thereby apply to have these Chapter 11 Cases recognized by the Canadian Court, this Court must enter the Order authorizing LSLP to act as the Foreign Representative in the Canadian Proceedings. If the Order is granted, LSLP will be able to file

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<sup>3</sup> A “foreign representative” is defined in section 45(1) of the CCAA to mean “a person or body, including one appointed on an interim basis, who is authorized, in a foreign proceeding respect of a debtor company, to

- (a) monitor the debtor company’s business and financial affairs for the purpose of reorganization; or
- (b) act as a representative in respect of the foreign proceeding.”

the Order with the Canadian Court as the instrument authorizing LSLP to act as the Foreign Representative pursuant to section 46 of the CCAA.<sup>4</sup>

**Relief Requested**

24. By this Motion, the Debtors respectfully request entry of the Order, pursuant to sections 105 and 1505 of the Bankruptcy Code, authorizing LSLP to act as the Foreign Representative on behalf of the Debtors' estates in any judicial or other proceedings in a foreign country, including in the Canadian Proceedings.

**Basis for Relief**

25. Section 1505 of the Bankruptcy Code provides that:

A trustee or another entity (including an examiner) may be authorized by the court to act in a foreign country on behalf of an estate created under section 541. An entity authorized to act under this section may act in any way permitted by the applicable foreign law.

11 U.S.C. § 1505.

26. Further, section 1107 of the Bankruptcy Code provides, in relevant part:

(a) Subject to any limitations on a trustee serving in a case under this chapter, and to such limitations or conditions as the court prescribes, a debtor in possession shall have all the rights, other than the rights to compensation under section 330 of this title, and powers, and shall perform all the functions and duties . . . of a trustee serving in a case under this chapter.

11 U.S.C. § 1107(a).

27. The Debtors respectfully submit that section 1107 of the Bankruptcy Code confers upon LSLP, as a debtor in possession, sufficient rights, powers and duties to act as a

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<sup>4</sup> The Debtors have proposed that Alvarez & Marsal Canada Inc. be appointed by the Canadian Court as information officer in the Canadian Proceedings (the "Information Officer"). The Information Officer will serve as an officer of the Canadian Court and report to the Canadian Court from time to time (including at the hearing of the initial application) on the status of the Chapter 11 Cases, the proposed restructuring of the Debtors, the Canadian Proceedings and any other information that may be material to the Canadian Court. The Information Officer and its counsel will be compensated by LSLP in accordance with the terms of an order of the Canadian Court.

Foreign Representative of the Debtors' estates. However, to avoid any possible confusion or doubt regarding this authority and to comply with the requirements of section 46 of the CCAA, the Debtors seek entry of the Order, pursuant to section 1505 of the Bankruptcy Code, explicitly authorizing LSLP to act as the Foreign Representative of the Debtors' estates in the Canadian Proceedings and in any other judicial or other proceeding in a foreign country.

28. Authorizing LSLP to act as the Foreign Representative on behalf of the Debtors' estates in the Canadian Proceedings will allow coordination of these Chapter 11 Cases and the Canadian Proceedings, and provide an effective mechanism to protect and maximize the value of the Debtors' assets and estates. In other large chapter 11 cases where a debtor has foreign assets and/or operations requiring a recognition proceeding in this jurisdiction and others, courts in this district and others have granted relief similar to that requested herein. See, e.g., In re TerreStar Networks Inc., Case No. 10-15446 (SHL) (Bankr. S.D.N.Y. Oct. 20, 2010) [Docket No. 30]; In re Chemtura Corp., Case No. 09-11233 (REG) (Bankr. S.D.N.Y. Aug. 9, 2010) [Docket No. 3532]; In re Japan Airlines Corp., Case No. 10-10198 (JMP) (Bankr. S.D.N.Y. Feb. 17, 2010) [Docket No. 49]; Lehman Bros. Holdings Inc., Case No. 08-13555 (JMP) (Bankr. S.D.N.Y. Aug. 27, 2009) [Docket No. 4712]; In re MES Int'l, Inc., Case No. 09-14109 (PJW) (Bankr. D. Del. April 7, 2010) [Docket No. 506]; In re TLC Vision (USA) Corp., No. 09-14473 (KG) (Bankr. Del. Dec. 22, 2009) [Docket No. 34].

29. Accordingly, the Debtors submit that the relief requested herein is necessary and appropriate, is in the best interests of their estates and creditors and should be granted in all respects.

#### **Motion Practice**

30. This Motion includes citations to the applicable rules and statutory authorities upon which the relief requested herein is predicated, and a discussion of their

application to this Motion. Accordingly, the Debtors submit that this Motion satisfies Rule 9013-1(a) of the Local Bankruptcy Rules for the Southern District of New York.

**Notice**

31. The Debtors have caused notice of this Motion to be provided by electronic mail, facsimile, regular or overnight mail and/or hand delivery to (a) the Office of the United States Trustee for the Southern District of New York, (b) the entities listed on the Consolidated List of Creditors Holding the 20 Largest Unsecured Claims filed pursuant to Bankruptcy Rule 1007(d), (c) counsel to the agents for the Debtors' prepetition secured lenders, (d) counsel to the ad hoc secured group of Prepetition LP Lenders (as defined in the Montagner Declaration), (e) counsel to Harbinger Capital Partners, (f) the Internal Revenue Service, (g) the United States Attorney for the Southern District of New York, (h) the Federal Communications Commission and (i) Industry Canada. Due to the circumstances surrounding this Motion and the nature of the relief requested herein, the Debtors respectfully submit that no other or further notice is required or necessary.

**No Previous Request**

32. No prior motion for the relief requested herein has been made by the Debtors to this or any other court.

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WHEREFORE, for the reasons set forth above and in the Montagner Declaration, the Debtors respectfully request that the Court (a) enter an order, substantially in the form attached hereto as Exhibit A, granting the relief requested herein and (b) grant such other and further relief as the Court may deem just and proper.

New York, New York  
Dated: May 14, 2012

/s/ Matthew S. Barr  
Paul S. Aronzon (*pro hac vice* pending)  
Matthew S. Barr  
Steven Z. Szanzer  
Karen Gartenberg  
MILBANK, TWEED, HADLEY & McCLOY LLP  
One Chase Manhattan Plaza  
New York, NY 10005-1413  
(212) 530-5000

*Proposed Counsel to Debtors and Debtors in Possession*

**Exhibit A**

**Proposed Order**

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

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In re:	)	
	)	Chapter 11
LIGHTSQUARED INC., <i>et al.</i> ,	)	
	)	Case No. 12-_____ (___)
	)	
Debtors. <sup>1</sup>	)	Joint Administration Requested
	)	

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**ORDER AUTHORIZING LIGHTSQUARED LP  
TO ACT AS FOREIGN REPRESENTATIVE PURSUANT TO 11 U.S.C. § 1505**

Upon the motion (the “Motion”)<sup>2</sup> of LightSquared Inc. and certain of its affiliates, as debtors and debtors in possession (collectively, the “Debtors”) in the above-captioned chapter 11 cases (the “Chapter 11 Cases”), for entry of an order (the “Order”), pursuant to sections 105 and 1505 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as amended, the “Bankruptcy Code”), authorizing LightSquared LP (“LSLP”) to act as the Foreign Representative on behalf of the Debtors’ estates in any judicial or other proceedings in a foreign country, including in the Canadian Proceedings; and upon the Montagner Declaration; and it appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and it appearing that this proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and it appearing that venue of this proceeding and the Motion in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and notice of the Motion appearing adequate and appropriate under

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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 or foreign tax or registration identification number, are: LightSquared Inc. (8845), LightSquared Investors Holdings Inc. (0984), One Dot Four Corp. (8806), One Dot Six Corp. (8763), SkyTerra Rollup LLC (N/A), SkyTerra Rollup Sub LLC (N/A), SkyTerra Investors LLC (N/A), TMI Communications Delaware, Limited Partnership (4456), LightSquared GP Inc. (6190), LightSquared LP (3801), ATC Technologies, LLC (3432), LightSquared Corp. (1361), LightSquared Finance Co. (6962), LightSquared Network LLC (1750), LightSquared Inc. of Virginia (9725), LightSquared Subsidiary LLC (9821), Lightsquared Bermuda Ltd. (7247), SkyTerra Holdings (Canada) Inc. (0631), SkyTerra (Canada) Inc. (0629) and One Dot Six TVCC Corp. (0040). The location of the debtors’ corporate headquarters is 450 Park Avenue, Suite 2201, New York, NY 10022.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Motion or in the Montagner Declaration, as applicable.

the circumstances; and the Court having found that no other or further notice is needed or necessary; and the Court having reviewed the Motion and the Montagner Declaration and having heard statements in support of the Motion at a hearing held before the Court (the "Hearing"); and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and it appearing, and the Court having found, that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors and other parties in interest; and any objections to the relief requested in the Motion having been withdrawn or overruled on the merits; and after due deliberation and sufficient cause appearing therefor, it is hereby **ORDERED** that:

1. The Motion is granted to the extent set forth herein.
2. LSLP is hereby authorized to act as the Foreign Representative on behalf of the Debtors' estates in any judicial or other proceeding in a foreign country, including in the Canadian Proceedings. As a Foreign Representative, LSLP shall be authorized and shall have the power to act in any way permitted by applicable foreign law, including, but not limited to, (a) seeking recognition of these Chapter 11 Cases in the Canadian Proceedings, (b) requesting that the Canadian Court lend assistance to this Court in protecting the property of the Debtors' estates and (c) seeking any other appropriate relief from the Canadian Court that LSLP deems just and proper in the furtherance of the protection of the Debtors' estates.
3. This Court requests the aid and assistance of the Canadian Court to recognize these Chapter 11 Cases as a "foreign main proceeding" and LSLP as a "foreign representative" pursuant to the CCAA, and to recognize and give full force and effect in all provinces and territories of Canada to this Order.



4. The Debtors are authorized and empowered to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

5. The requirements set forth in Rule 9013-1(a) of the Local Bankruptcy Rules for the Southern District of New York are satisfied.

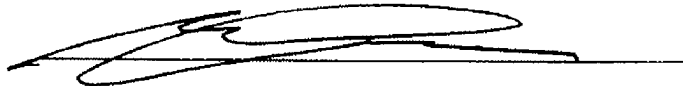
6. The Court retains jurisdiction with respect to all matters arising from or related to the implementation and interpretation of this Order.

New York, New York  
Date: \_\_\_\_\_, 2012

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UNITED STATES BANKRUPTCY JUDGE

Exhibit "H" to the Affidavit of Elizabeth Creary,  
sworn before me this 1<sup>st</sup> day of June, 2012.

A handwritten signature in black ink, appearing to read 'Michael Colin Anderson', written over a horizontal line.

Commissioner for Taking Affidavits

Michael Colin Anderson,  
a Commissioner, etc., Province of  
Ontario, while a Student-at-Law.  
Expires May 8, 2015

Paul S. Aronzon (*pro hac vice* pending)  
Matthew S. Barr  
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One Chase Manhattan Plaza  
New York, NY 10005-1413  
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*Proposed Counsel to Debtors and Debtors in Possession*

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

In re:	)	
	)	Chapter 11
LIGHTSQUARED INC., <i>et al.</i> ,	)	
	)	Case No. 12-_____ (___)
Debtors. <sup>1</sup>	)	Joint Administration Requested
	)	

**DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS  
(A) AUTHORIZING DEBTORS TO (I) CONTINUE USING EXISTING CASH  
MANAGEMENT SYSTEMS, BANK ACCOUNTS AND BUSINESS FORMS, AND  
(II) CONTINUE INTERCOMPANY TRANSACTIONS, (B) PROVIDING  
POSTPETITION INTERCOMPANY CLAIMS ADMINISTRATIVE EXPENSE  
PRIORITY, (C) AUTHORIZING DEBTORS' BANKS TO HONOR ALL RELATED  
PAYMENT REQUESTS AND (D) WAIVING INVESTMENT GUIDELINES OF  
SECTION 345(B) OF BANKRUPTCY CODE**

LightSquared Inc. and certain of its affiliates, as debtors and debtors in possession  
(collectively, "LightSquared" or the "Debtors") in the above-captioned chapter 11 cases (the  
"Chapter 11 Cases"), file this motion (the "Motion") for entry of an interim order (the "Interim

<sup>1</sup> The debtors in these chapter 11 cases, along with the last four digits of each debtor's federal or foreign tax or registration identification number, are: LightSquared Inc. (8845), LightSquared Investors Holdings Inc. (0984), One Dot Four Corp. (8806), One Dot Six Corp. (8763), SkyTerra Rollup LLC (N/A), SkyTerra Rollup Sub LLC (N/A), SkyTerra Investors LLC (N/A), TMI Communications Delaware, Limited Partnership (4456), LightSquared GP Inc. (6190), LightSquared LP (3801), ATC Technologies, LLC (3432), LightSquared Corp. (1361), LightSquared Finance Co. (6962), LightSquared Network LLC (1750), LightSquared Inc. of Virginia (9725), LightSquared Subsidiary LLC (9821), Lightsquared Bermuda Ltd. (7247), SkyTerra Holdings (Canada) Inc. (0631), SkyTerra (Canada) Inc. (0629) and One Dot Six TVCC Corp. (0040). The location of the debtors' corporate headquarters is 450 Park Avenue, Suite 2201, New York, NY 10022.



Order”) (a) authorizing the Debtors to (i) continue to use their existing cash management systems, current bank accounts and current business forms (without reference to the Debtors’ status as debtors in possession), (ii) open new debtor in possession bank accounts with authorized depository banks and close any existing bank accounts as the Debtors deem necessary and appropriate in their sole discretion and (iii) continue performing ordinary course Intercompany Transactions (as defined below) and have Intercompany Claims (as defined below) resulting from Intercompany Transactions be granted administrative expense priority, (b) waiving the investment guidelines of section 345(b) of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as amended, the “Bankruptcy Code”) and (c) scheduling a final hearing (the “Final Hearing”) to consider entry of a final order (the “Final Order”) granting the relief provided in the Interim Order on a permanent basis and the additional relief described in this Motion. In support of this Motion, the Debtors submit the Declaration of Marc R. Montagner, Chief Financial Officer and Interim Co-Chief Operating Officer of LightSquared Inc., (A) in Support of First Day Pleadings and (B) Pursuant to Rule 1007-2 of Local Bankruptcy Rules for United States Bankruptcy Court for Southern District of New York (the “Montagner Declaration”). In further support of this Motion, the Debtors respectfully state as follows:

**Jurisdiction**

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).
2. Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The statutory bases for the relief requested herein are sections 105(a), 345, 363, 364, 503, 507, 1107 and 1108 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as amended, the “Bankruptcy Code”) and Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

## **Background**

### **A. Introduction**

4. On May 14, 2012 (the “Petition Date”), each of the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

5. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Debtors have requested the joint administration of these Chapter 11 Cases for procedural purposes. No trustee, examiner or statutory committee of unsecured creditors has been appointed in these Chapter 11 Cases.

### **B. Overview of Debtors’ Businesses**

#### *(i) Debtors’ Satellite Business*

6. LightSquared, a mobile communications company with headquarters in New York and incorporated in Delaware in 1985, is the first private company to offer mobile satellite services throughout North America, initially using two geostationary satellites<sup>2</sup> as well as a portion of the electromagnetic spectrum known as the L-Band. Since its first satellite became operational in 1996, LightSquared has provided satellite communications services – which include data, voice, fax and dispatch services – to companies and federal, state, provincial, local and foreign governments that are wholesale purchasers of bandwidth power and capacity, resellers of telephony, data and dispatch services and retail voice users. For example,

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<sup>2</sup> These two first-generation satellites, known as MSAT-1 and MSAT-2, currently provide services to some existing customers, and have also, since March 10, 2012, provided emergency back-up service to all of LightSquared’s customers due to a solar flare(s), which temporarily disabled the SkyTerra-1 satellite, one of LightSquared’s two next-generation satellites. LightSquared is currently finalizing the assessment of the solar flare(s) prior to transitioning customers back to that satellite for service. LightSquared will also rely upon the MSAT system until such time that SkyTerra-2, LightSquared’s second next-generation satellite, is launched. Both MSAT-1 and MSAT-2 are approaching the ends of their useful lives and are part of the Prepetition LP Collateral (as defined below). They have, in the past, experienced anomalies and Solid State Power Amplifier failures and neither currently operates at full capacity.

LightSquared provides services to public safety officers, emergency responders and the United States military. Today, LightSquared's mobile satellite business generates approximately \$30 million in annual revenue and provides service to approximately 300,000 end users.

7. LightSquared launched SkyTerra-1 in November 2010, which, as mentioned above, is one of two next-generation satellites that have been constructed by LightSquared. LightSquared's next-generation satellites are two of the most powerful mobile satellites ever constructed. Each is equipped with a 22 meter (75 foot) diameter antenna, which provides ten (10) times better performance than that provided by LightSquared's prior satellites. The satellites have the capability of forming up to five hundred (500) beams over North America and can operate with devices that are as small as standard cell phones or USB modems. The SkyTerra-1 and SkyTerra-2 satellite networks utilize state-of-the art ground-based beam forming systems. Such systems allow flexibility in beam shapes, number, bandwidth allocation and beam power allocation, which is unprecedented in prior mobile satellite systems. SkyTerra-1 is fully operational, and SkyTerra-2 is constructed and stored in preparation for launch.

8. LightSquared currently operates three (3) lines of business, including Mobile Satellite Communications ("MSAT"), Mobile Data Services ("MDS") and Private Network Carriers ("PNC") through a wholesale business model whereby its partners bill the end users, and LightSquared bills its partners at a wholesale rate. Through these three lines of business, LightSquared has over fifteen wholesale partners, including, but not limited to, Comtech Mobile Datacom Corporation, XATA Corporation, SkyBitz, Outerlink, Omnistar, Wireless Matrix, EMS Technologies/Honeywell, Network Innovations, Glentel, Astrum, Infosat, Inmosat and International Satellite Service, that collectively support approximately 300,000 subscribers across several markets throughout North America.

9. MSAT Business. LightSquared's MSAT business provides circuit-switched voice, low data rate services and push-to-talk ("PTT") services, which are sold through LightSquared's authorized wholesale service providers and are utilized by a variety of governmental agencies at the federal, state and local level, as well as by various markets in the enterprise space. LightSquared is currently the only commercial satellite operator in North America offering PTT service. LightSquared's two-way, PTT radio service over satellite is a popular option for communications in remote areas or during emergency situations, and its dispatch or two-way radio style is familiar to the public safety community and ideal for command and control. Thus, in the public/government sector, LightSquared's MSAT business serves end users in public safety, emergency management and defense as well as health and education.

10. Specifically, LightSquared's PTT products and services were utilized by public safety and education (such as the University of North Carolina Wilmington) end users during, and in preparation for, several disasters, including Hurricane Katrina (Mississippi Department of Wildlife, Fisheries and Parks), Hurricane Gustav (several federal, state and local agencies), Hurricane Irene (DE State Police, MD Emergency Management Agency), Kentucky Ice Storms (Kentucky Department for Public Health) and, most recently, the tornadoes in Kentucky (Kentucky Department for Public Health). In all of these disasters, LightSquared's mobile satellite service, with its PTT capability, provided instant communications for public safety agencies and a means for interoperability among disparate agencies.

11. Moreover, in recent years, the United States has faced a variety of costly natural and man-made disasters, including hurricanes, tornadoes, wildfires, flooding and earthquakes, as well as the 9/11 terrorist attacks, which have amplified the need for dependable communications that enable organizations to communicate with each other. Often, the only means

available to the public safety/emergency responder community to do so is through mobile satellite communications. To address these needs, federal, state and local agencies have voluntarily banded together with LightSquared in a public-private partnership to create the Satellite Mutual Aid Radio Talkgroup (“SMART”) program – enabling nationwide and regional interoperability at no additional cost to LightSquared users. Since SMART is a feature provided at no cost to LightSquared’s public safety end users, the SMART program, incorporating such SMART feature, is a cost-efficient program that delivers measurable return on investment – swift and reliable communications interoperability for emergency response and contingency operations. With the rapid growth of SMART, public safety and emergency responders have a resource that enables communications interoperability that is immediate, reliable and always available.

12. It is thus no surprise that the nationwide and regional SMART end users include, among others, (a) JSMART, utilized by public safety agencies across the country and managed by the DOJ Wireless Management, (b) LSMART, utilized nationally by law enforcement and managed by the U.S. Marshals Service, (c) USMART, utilized by urban search and rescue teams across the United States and managed by the Montgomery County, Maryland Fire & Rescue Service, (d) NE SMART, utilized by the northeast states and managed by the Connecticut State Police, (e) WSMART, utilized by the western states and managed by the California Emergency Management Agency and (f) MWSMART, utilized by the midwest states and managed by the Indiana Department of Homeland Security.

13. The MSAT line of business also serves various markets in the enterprise space, including maritime, oil and gas, utilities, transportation, media and recreation. In the maritime vertical market, especially in Alaska, fishermen rely on LightSquared’s PTT capability while at sea in extreme environments, especially north of 60° toward the Aleutians.



Additionally, enterprise users in the oil and gas industry rely on LightSquared's mobile satellite service in the Gulf region to communicate with workboats and on oil rigs/platforms for instantaneous communication between rigs/boats and back to operations centers on the coast.

14. MDS Business. LightSquared's second line of business, MDS, is a low data rate service offering used primarily for applications such as fleet and load management, email, vehicle tracking, two-way messaging and broadcast messaging. Like LightSquared's MSAT services, MDS is sold through LightSquared's authorized wholesale service providers and is utilized by various end users. One such end user, the New Mexico State Police, utilizes MDS in police cruisers to enable officers to perform database lookups on ruggedized laptops in remote areas where no terrestrial communications exist and LightSquared's satellite service is the only means by which to meet this critical data communications requirement in an effective manner.

15. PNC Business. Finally, LightSquared's third line of business, PNC, enables customers to lease bandwidth from LightSquared over which they offer custom satellite data solutions (typically, asset tracking services for truck and rail) to a wide variety of end users. In connection therewith, LightSquared's PNC customers are responsible for developing a custom air interface, providing hub, end-user equipment and servicing end users. One of LightSquared's largest PNC customers, SkyBitz, provides asset tracking services through LightSquared's satellite capacity for Tri State Motor Transit Co., an end user that hauls high-risk cargo such as munitions, explosives and nuclear fuel bound for sites from coast to coast. LightSquared's satellite capacity ensures that trailers hauling this cargo are constantly tracked where terrestrial communications do not exist. Another PNC customer, Comtech Mobile Datacom Corp., provides service to the United States military, utilizing LightSquared's service in North America in connection with the Blue Force Tracking system that tracks all military assets.

(ii) *Debtors' Terrestrial Component of Satellite Business*

16. In the late 1990s, LightSquared determined that adding a terrestrial (*i.e.*, land-based) component to its satellite system would optimize the use of the L-Band and provide a communications system with superior reliability and coverage. By combining a nationwide system of terrestrial base stations with one of the largest commercial satellites ever launched – the state-of-the-art SkyTerra-1 – LightSquared could offer coverage of a satellite system in North America and the capacity of a next-generation, high-speed wireless broadband network.

17. LightSquared determined that a significant market opportunity was created for a wholesale-only, 4th Generation Long Term Evolution (“4G LTE”) wireless broadband network due to, among other things, (a) the proliferation of new mobile devices, such as smartphones and tablets, which accelerated demand for ubiquitous, on-the-go data-rich Internet services, (b) limited wireless network capacity available to support increased data usage and (c) substantial costs and barriers to entry preventing smaller carriers and new operators from deploying nationwide 4G LTE networks. LightSquared believed that many wireless operators would face significant challenges meeting network demands due to spectrum availability and capital shortages because the wireless communications industry was (and currently remains) dominated by a small number of established, national wireless carriers and current levels of data transmission already utilized significant network capacity. This led LightSquared to conclude that some carriers would be unable to deploy their own 4G LTE networks in a timely and cost-effective manner, while others would be unable to install enough capacity to serve the needs of their existing customer bases, thereby resulting in such carriers being unable to offer comparable service quality and speeds on a cost-competitive basis with the largest national carriers. To address this imbalance, LightSquared’s strategy was, and currently remains, to enable a broad

range of potential wholesale customers to launch competitive retail wireless service offerings using wholesale capacity on LightSquared's 4G LTE network.

18. Accordingly, LightSquared initiated the process of building the only 4G LTE open wireless broadband network that incorporates both terrestrial (*i.e.*, land-based) and satellite coverage throughout North America and offers people the speed, value and reliability of universal connectivity, wherever they may be located. The satellite component of the system would provide service to the population in areas not otherwise covered by terrestrial systems. Through its wholesale-only business model, entities without their own wireless network, or that have limited geographic coverage or spectrum, will be able to market and sell their own devices, applications and services using the LightSquared network at a competitive price and without retail competition from LightSquared. This, in turn, will enable manufacturers and retailers to provide a solution for consumers, while creating new customer relationships and ongoing revenue streams for themselves. LightSquared's partners will also be able to develop their own devices, applications and services on the LightSquared network because it is a completely open network system.

19. As of the Petition Date, the Debtors employed approximately 168 people in the United States and Canada. As of February 29, 2012, the Debtors had approximately \$4.48 billion in assets (book value) and \$2.29 billion in liabilities.

**C. Additional Information**

20. Additional information regarding the Debtors' businesses, assets, capital structure and the circumstances leading to the filing of these Chapter 11 Cases is set forth in the Montagner Declaration, which was filed contemporaneously herewith.

**Cash Management System, Bank Accounts and Business Forms**

**A. Description of Debtors' Existing Cash Management System**

*(i) Inc. Group's<sup>3</sup> Cash Management System*

21. As set forth in the Montagner Declaration, in the ordinary course of business, the Inc. Group utilizes an integrated, centralized cash management system (the "Inc. Group Cash Management System") to collect, manage, disburse and invest funds used in its operations. In the ordinary course, the Inc. Group maintains current and accurate accounting records of all its daily cash transactions.

22. As of the Petition Date, the Inc. Group maintained the following bank accounts (the "Inc. Group Bank Accounts") at various banks (the "Inc. Group Cash Management Banks"): <sup>4</sup>

- (a) Inc. Group Concentration Account: LightSquared Inc. maintains one (1) disbursement and operating account at SunTrust Bank ("SunTrust") in the name of LightSquared Inc. (the "Inc. Group Concentration Account") that serves as a primary collection point for all funds moved into and through the Inc. Group Cash Management System. The Inc. Group Concentration Account is funded manually, on an as needed basis, with (i) the proceeds of loans under the Prepetition Inc. Credit Agreement, (ii) proceeds from the Inc. Group Investment Accounts (as defined herein), (iii) proceeds from the Inc. Group Restricted Account (as defined herein) and (iv) proceeds from approved dividends periodically distributed by LightSquared LP. The Inc. Group Concentration Account, in turn, serves as one of the two (2) Inc. Group Disbursement/Operating Accounts (as further described herein) and funds, and will continue to

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<sup>3</sup> The "Inc. Group" consists of (a) the following Debtor entities: LightSquared Inc., LightSquared Investors Holdings Inc., One Dot Six Corp., One Dot Four Corp., SkyTerra Rollup LLC, SkyTerra Rollup Sub LLC, SkyTerra Investors LLC, TMI Communications Delaware, Limited Partnership, LightSquared GP Inc. and One Dot Six TVCC Corp. and (b) the following non-Debtor entities: TVCC Holding Company, LLC, TVCC Intermediate Corp., Columbia One Six Partners IV, Inc., Columbia FMS Spectrum Partners IV, Inc., TVCC One Six Holdings LLC and CCMM I LLC.

<sup>4</sup> A list of the Inc. Group Bank Accounts is set forth on Exhibit A attached hereto. A chart depicting the Inc. Group Cash Management System is attached hereto as Exhibit B-1.

fund postpetition, the remainder of the Inc. Group Disbursement/Operating Accounts. All wire and automated clearing house payments, including those relating to operating expenses, insurance and taxes, are made, either directly or indirectly, from this account.

- (b) Disbursement/Operating Accounts: In addition to the Inc. Group Concentration Account, the Inc. Group maintains one (1) corporate disbursement and operating accounts at SunTrust in the name of One Dot Six Corp. (the "One Dot Six Corp. Disbursement/Operating Account") and, together with the Inc. Group Concentration Account, the "Inc. Group Disbursement/Operating Accounts"). The Inc. Group Disbursement/ Operating Accounts are all funded manually, on an as needed basis. The Inc. Group Concentration Account funds shortfalls in the One Dot Six Corp. Disbursement/Operating Account. The Inc. Group Disbursement/Operating Accounts are used to pay general corporate expenses, including accounts payable, of the Inc. Group members.
- (c) Restricted Account: The Inc. Group maintains one (1) interest-bearing certificate of deposit account (the "Inc. Group Restricted Account") in the name of LightSquared Inc. at Bank of America, N.A. The Inc. Group Restricted Account contains collateral associated with the Inc. Group's corporate travel and entertainment credit card program.
- (d) Investment Accounts: The Inc. Group maintains two (2) investment accounts at the Royal Bank of Canada ("RBC") (the "Inc. Group Investment Accounts"): (i) No. XXX-XXX16 (the "Inc. Investment Account No. XXX-XXX16") in the name of LightSquared Inc. and (ii) No. XXX-XXX06 (the "TMI Investment Account No. XXX-XXX06") in the name of TMI Communications Delaware, Limited Partnership. The Inc. Group Investment Accounts are funded by excess funds transferred from the Inc. Group Concentration Account and through dividends approved by LightSquared LP. Funds in the Inc. Group Investment Account are invested per the Inc. Group's corporate investment guidelines. In the past, the Inc. Group manually transferred funds from the Inc. Group Investment Accounts to the Inc. Group Concentration Account or third parties periodically on an as needed basis. All transfers between the Inc. Group Investment Accounts and the Inc. Group

Concentration Account are initiated by the Debtors' approved bank signatories, including the treasury manager or treasurer, delivering transfer instructions to the investment managers responsible for the applicable accounts.

(ii) *LP Group's<sup>5</sup> Cash Management System*

23. As set forth in the Montagner Declaration and in the ordinary course of business, the LP Group utilizes an integrated, centralized cash management system (the "LP Group Cash Management System") and, together with the Inc. Group Cash Management System, the "Cash Management Systems") to collect, manage, disburse and invest funds used in its operations.<sup>6</sup> In the ordinary course, the LP Group maintains current and accurate accounting records of all its daily cash transactions.

24. As of the Petition Date, the LP Group maintained the following bank accounts (the "LP Group Bank Accounts") and, together with the Inc. Group Bank Accounts, the "Bank Accounts") at various banks (the "LP Group Cash Management Banks") and, together with the Inc. Group Cash Management Banks, the "Cash Management Banks");<sup>7</sup>

(a) LP Group Concentration Account: LightSquared LP maintains one (1) disbursement and operating account at

<sup>5</sup> The "LP Group" consists of (a) the following Debtor entities: LightSquared LP, ATC Technologies, LLC, LightSquared Corp., LightSquared Finance Co. LightSquared Network LLC, LightSquared Inc. of Virginia, LightSquared Subsidiary LLC, SkyTerra Holdings (Canada) Inc., SkyTerra (Canada) Inc. and Lightsquared Bermuda Ltd.; and (b) the following non-Debtor entity: LightSquared (UK) Limited.

<sup>6</sup> LightSquared LP is party, however, to (a) that certain Asset Purchase Agreement, dated August 26, 2011, between LightSquared LP and NI Satellite Inc. and (b) that certain Asset Purchase Agreement, dated August 26, 2011, between LightSquared LP and NI Government Services Inc. (collectively, the "Retail APAs") pursuant to which LightSquared LP sold or is in the process of selling all of its satellite retail business and corresponding accounts receivables. Pursuant to the Retail APAs and in the ordinary course, LightSquared LP collects certain receipts that it has historically remitted directly to NI Satellite Inc. and NI Government Services Inc. on a regular and periodic basis. The Debtors anticipate that they will continue to turn over such funds, which currently amount to approximately \$10,000 to \$15,000 week, to NI Satellite Inc. and NI Government Services Inc., as they have done in the ordinary course prior to the Petition Date. Such weekly amounts are expected to decrease as customer accounts are systematically transitioned to making payments directly to NI Satellite Inc. and NI Government Services Inc.

<sup>7</sup> A list of the LP Group Bank Accounts is set forth on Exhibit A attached hereto. A chart depicting the LP Group Cash Management System is attached hereto as Exhibit B-2.

SunTrust in the name of LightSquared LP (the "LP Group Concentration Account") that serves as a primary collection point for all funds moved into and through the LP Group Cash Management System. The LP Group Concentration Account is funded manually, on an as needed basis, with (i) proceeds of loans under the Prepetition LP Credit Agreement, (ii) on very rare occasions, funds from the LightSquared Corp. SunTrust Disbursement/Operating Account (as defined herein) and LightSquared Corp. Scotiabank Disbursement/Operating Account (as defined herein), (iii) funds from the LightSquared LP Investment Accounts (as defined herein), (iv) funds from the LP Group Restricted Account (as defined herein) and (v) funds from the Inc. Group Concentration Account. The LP Group Concentration Account, in turn, serves as one of the four (4) LP Group Disbursement/Operating Accounts (as defined herein) and funds, and will continue to fund postpetition, the remainder of the LP Group Disbursement/Operating Accounts. All wire and automated clearing house payments, including those relating to operating expenses, payroll, insurance and taxes, are made, either directly or indirectly, from this account.

- (b) Lockbox: The LP Group maintains a lockbox with SunTrust (the "LP Group Lockbox"). In the ordinary course, customers deposit checks into the LP Group Lockbox, which are credited to the LP Group Concentration Account. The LP Group Lockbox will be maintained postpetition.
- (c) Disbursement/Operating Accounts: In addition to the LP Group Concentration Account, the LP Group maintains (i) two (2) corporate disbursement and operating accounts at SunTrust in the names of LightSquared Corp. (the "LightSquared Corp. SunTrust Disbursement/Operating Account") and LightSquared Network LLC (the "LightSquared Network LLC Disbursement/Operating Account") and (ii) one (1) Canadian dollar corporate disbursement and operating account at Scotiabank under the name of LightSquared Corp. (the "LightSquared Corp. Scotiabank Disbursement/Operating Account") and, together with the LP Group Concentration Account, the LightSquared Corp. SunTrust Disbursement/Operating Account and the LightSquared Network LLC Disbursement/Operating Account, the "LP Group Disbursement/Operating Accounts"). The LP Group

Disbursement/Operating Accounts are all funded manually, on an as needed basis. The LP Group Concentration Account funds shortfalls in the LightSquared Corp. SunTrust Disbursement/Operating Account, the LightSquared Corp. Scotiabank Disbursement/Operating Account and the LightSquared Network LLC Disbursement/Operating Account. The LP Group Disbursement/Operating Accounts are used to pay general corporate expenses, including accounts payable, of the LP Group members.

- (d) Restricted Account: The LP Group maintains one (1) interest-bearing restricted money market account (the "LP Group Restricted Account") in the name of LightSquared LP at Comerica Bank. The LP Group Restricted Account is funded by the LP Group Concentration Account, as needed, and contains collateral associated with the Inc. Group's letters of credit and credit card collateral. Unrestricted funds contained in the LP Group Restricted Account may be transferred out of the account via telephone with a personal identification number.
- (e) Investment Accounts: The LP Group maintains three (3) investment accounts (the "LP Group Investment Accounts" and, together with the LightSquared LP Inc. Investment Accounts, the "Investment Accounts"): (i) No. XXX-XXX98 at RBC in the name of LightSquared LP (the "LP Investment Account No. XXX-XX98"), (ii) No. XXXXXX50 in the name of LightSquared LP at Morgan Stanley Smith Barney LLC (the "LP Investment Account No. XXXXXX50" and, together with LP Investment Account No. 311-23498, the "LP Investment Accounts") and (iii) No. XXXXX XXXXX 18 in the name of LightSquared Corp. at Scotiabank (the "LightSquared Corp. Investment Account No. XXXXX XXXXX 18"). The LP Investment Accounts are funded by excess funds transferred from the LP Group Concentration Account and invested per the Inc. Group's corporate investment guidelines. In the past, the LP Group manually transferred funds from the LP Investment Accounts to the LP Group Concentration Account or third parties periodically on an as needed basis. All transfers between the LP Investment Accounts and the LP Group Concentration Account are initiated by the Debtors' approved bank signatories, including the treasury manager or treasurer, delivering transfer instructions to the investment managers responsible



for the applicable accounts. In the past, LightSquared Corp. made manual book transfers, as needed, between LightSquared Corp. Investment Account No. XXXXX XXXXX 18 and LightSquared Corp. Scotiabank Disbursement/Operating Account.

- (f) Foreign Exchange Deposit Account. The LP Group maintains a Euro deposit account in the name of LightSquared LP (the "LP Group Foreign Exchange Deposit Account") at Wells Fargo Bank, N.A. The LP Group Foreign Exchange Deposit Account is used to hold Euro hedge proceeds and, as of the Petition Date, holds a *de minimis* account balance. Two other accounts at SunTrust were historically used by the Debtors for Euro and Canadian dollar hedge proceeds, but they currently are not in use.

**B. Debtors' Existing Business Forms and Checks**

25. In the ordinary course of business, the Debtors use numerous business forms, including, without limitation, checks, business cards, letterhead, purchase orders and invoices (the "Business Forms"). To minimize expense to their estates and avoid confusion on the part of employees, customers and suppliers, the Debtors respectfully request that the Court authorize them to continue to use all correspondence and Business Forms, as such forms were in existence immediately prior to the Petition Date without reference to the Debtors' status as debtors in possession; provided, however, that upon depletion of the Debtors' Business Forms stock, the Debtors will obtain new Business Forms reflecting their status as debtors in possession, the Debtors' bankruptcy case name and number and the type of account. Such authorization will enable the Debtors to avoid the expense and delay of ordering new Business Forms. Additionally, the Debtors will obtain a stamp that they will use to indicate their status as debtors in possession and will also immediately update their computer-generated checks to reflect the same.

**C. Debtors' Investment Practices**

26. In the ordinary course of business, the Debtors' Investment Accounts are subject to certain guidelines (the "Investment Practices"). The objective of the Investment Practices is to preserve principal and maintain sufficient liquidity to meet operational objectives, contractual obligations and debt requirements, while seeking to maximize investment yield subject to secured creditor approved investment alternatives, policy guidelines and the approved investment vehicles. Pursuant to the Investment Practices, the Debtors invest surplus cash, through the Investment Accounts, in (a) obligations issued, fully guaranteed or insured by U.S. government agencies, authorities, instrumentalities or sponsored entities ("U.S. Government Securities"), (b) money market mutual funds with high ratings under Standard & Poor's Rating Group ("S&P") and Moody's Investor Service, Inc. ("Moody's") and (c) to a more limited degree, certificates of deposit, commercial paper and repurchase agreements with high ratings under S&P and Moody's.

**D. Debtors' Intercompany Transactions and Resulting Intercompany Claims**

27. In the ordinary course of business, cash amounts may be received or paid by one Debtor entity on behalf of other Debtor entities and, depending on the transaction, have been historically recorded as capital contributions or equity investments (the "Cash Transactions"). The Debtors and certain non-Debtor affiliates utilize a cost allocation system, through which expenses initially paid by a Debtor or a non-Debtor affiliate for the benefit of other Debtors or non-Debtor affiliates are allocated to the appropriate entities in proportion to the benefits received by such entities (together with the Cash Transactions, the "Intercompany Transactions"). As a result of the Intercompany Transactions, intercompany receivables and payables are created for each applicable Debtor in the ordinary course of business (the "Intercompany Claims"). Although the Debtors have in the past created notes to evidence some

of the Intercompany Transactions (the “Intercompany Notes”), the Intercompany Transactions are also sometimes settled by book entry, rather than by an actual transfer of cash evidenced by Intercompany Notes. The Debtors maintain records of all transfers and can ascertain, trace and account for all Intercompany Transactions and will continue to do so during these Chapter 11 Cases. Continuing these Intercompany Transactions and other intercompany services will benefit the Debtors’ estates and will preserve the value of the Debtors’ ownership interest in their non-Debtor affiliates. If the Intercompany Transactions were to be discontinued, the Cash Management System and related administrative controls would be disrupted to the Debtors’ detriment. No Intercompany Transactions currently take place between the Debtors and their non-Debtor affiliates, and no Intercompany Transactions are expected to take place between the Debtors and their non-Debtor affiliates after the Petition Date.

28. As of the Petition Date, the Inc. Group holds approximately \$15 million of unencumbered cash. LightSquared Inc. and the remaining Debtor entities comprising the Inc. Group intend to use the Inc. Group’s unencumbered cash to fund (either directly or on behalf of each affected Debtor) the Debtors’ obligations arising in the ordinary course of business. As discussed above, and consistent with the Debtors’ practices prepetition, the Debtors will maintain records of all transfers made by members of the Inc. Group on behalf of members of the LP Group or members of the LP Group on behalf of members of the Inc. Group and trace and account for such Intercompany Transactions.

#### **Relief Requested**

29. By this Motion, the Debtors seek entry of the Interim Order and Final Order (a) authorizing the Debtors to (i) continue to use the Cash Management Systems, the Bank Accounts and the Business Forms, without reference to their status as debtors in possession, (ii) open new debtor in possession bank accounts with authorized depository banks and close any

existing Bank Accounts, as the Debtors deem necessary and appropriate in their sole discretion; provided, however, that the Debtors shall give prior notice to the Office of the United States Trustee for the Southern District of New York (the "U.S. Trustee"), any statutory committees appointed in these Chapter 11 Cases and counsel to the agents for the Debtors' prepetition secured lenders and (iii) continue performing ordinary course Intercompany Transactions, including related setoffs, and have Intercompany Claims resulting from Intercompany Transactions be granted administrative expense priority, and (b) waiving the investment guidelines of section 345(b) of the Bankruptcy Code.

30. The Debtors further request that the Court authorize the Cash Management Banks to (a) continue to maintain, service and administer the Bank Accounts and (b) debit the Debtors' accounts in the ordinary course of business on account of (i) all checks drawn on the Bank Accounts that are cashed at the Cash Management Banks or exchanged for cashier's checks by the payees thereof prior to the Petition Date, (ii) all checks or other items deposited in one of the Bank Accounts at the Cash Management Banks prior to the Petition Date that have been dishonored or returned unpaid for any reason, together with any fees and costs in connection therewith, and (iii) all undisputed prepetition amounts outstanding as of the date hereof, if any, owed to any Cash Management Bank as service charges for the maintenance of any aspect of the applicable Cash Management System.

**Basis for Relief**

**A. Ample Authority Exists To Continue Use of Cash Management Systems and Existing Bank Accounts**

31. The Court may authorize the Debtors to continue to use the Cash Management Systems and existing Bank Accounts pursuant to section 363(c)(1) of the Bankruptcy Code. Section 363(c)(1) of the Bankruptcy Code authorizes a debtor in possession

to “use property of the estate in the ordinary course of business without notice or a hearing.” 11 U.S.C. § 363(c)(1). The “framework of section 363 is designed to allow a trustee (or debtor in possession) the flexibility to engage in ordinary transactions without unnecessary creditor and bankruptcy court oversight, while protecting creditors by giving them an opportunity to be heard when transactions are not ordinary.” In re Roth Am., Inc., 975 F.2d 949, 952 (3d Cir. 1992); Charter Co. v. Prudential Ins. Co. Am. (In re Charter Co.), 778 F.2d 617, 621 (11th Cir. 1985) (indicating that an order authorizing debtor to employ a cash management system that was “usual and customary in the past” was “entirely consistent” with section 363(c)(1)). Included within the purview of section 363(c) of the Bankruptcy Code is a debtor’s ability to continue the “routine transactions” necessitated by a debtor’s cash management system. Amdura Nat’l Distrib. Co. v. Amdura Corp. (In re Amdura Corp.), 75 F.3d 1447, 1453 (10th Cir. 1996); accord Med. Malpractice Ins. Ass’n v. Hirsch (In re Lavigne), 114 F.3d 379, 384 (2d Cir. 1997); Chaney v. Official Comm. of Unsecured Creditors of Crystal Apparel, Inc. (In re Crystal Apparel, Inc.), 207 B.R. 406, 409 (S.D.N.Y. 1997). Thus, as one bankruptcy court has explained, “[a]pproval of cash management systems and related procedures and transactions employed in the ordinary course of a debtor’s business is common, particularly where . . . a bankruptcy case involves large and complex multiple affiliated debtors.” In re Federated Dep’t Stores, Inc., No. 90-130, 1990 Bankr. LEXIS 84, at \*2 (Bankr. S.D. Ohio Jan. 15, 1990).

32. In addition to the authority granted under section 363 of the Bankruptcy Code, the Court may grant relief consistent with the Debtors’ requests herein under section 105(a) of the Bankruptcy Code and the longstanding “doctrine of necessity” first articulated in Miltenberger v. Longansport, C. & S.W.R. Co., 106 U.S. 286 (1882). The Court possesses the power, pursuant to section 105(a) of the Bankruptcy Code, to “issue any order, process, or

judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). The purpose of section 105(a) of the Bankruptcy Code is “to assure the bankruptcy courts power to take whatever action is appropriate or necessary in aid of the exercise of their jurisdiction.” 2 Collier on Bankruptcy, ¶105.01 (Alan N. Resnick & Henry J. Somme reds., (16th ed. 2009). Modern application of the doctrine of necessity is derived from the inherent equitable powers granted to the bankruptcy court under section 105(a) of the Bankruptcy Code. See Schwartz v. Aquatic Dev. Grp., Inc. (In re Aquatic Dev. Grp., Inc.), 352 F.3d 671, 680 (2d Cir. 2003) (“it is axiomatic that bankruptcy courts are ‘courts of equity, empowered to invoke equitable principles to achieve fairness and justice in the reorganization process’”) (quoting Momentum Mfg. Corp. v. Employee Creditors Comm. (In re Momentum Mfg. Corp.), 25 F.3d 1132, 1136 (2d Cir. 1994)). Continuing the Intercompany Transactions through the Cash Management Systems without interruption is vital to the Debtors’ business operations and the success of these reorganization cases. Therefore, it is within the Court’s equitable power under section 105(a) of the Bankruptcy Code to approve the continued use of the Cash Management Systems.

33. In other large chapter 11 cases, courts routinely grant chapter 11 debtors authority to continue using existing cash management systems. See, e.g., In re Eastman Kodak Co., Case No. 12-10202 (ALG) (Bankr. S.D.N.Y. Feb. 16, 2012) [Docket No. 376]; In re Sbarro, Inc., Case No. 11-11527 (SCC) (Bankr. S.D.N.Y. May 4, 2011) [Docket No. 161]; In re Great Atl. & Pac. Tea Co., Inc., Case No. 10-24549 (RDD) (Bankr. S.D.N.Y. Feb. 7, 2011) [Docket No. 733]; In re InSight Health Servs. Holdings Corp., Case No. 10-16564 (AJG) (Bankr. S.D.N.Y. Jan. 4, 2011) [Docket No. 97]; In re Metro-Goldwyn-Mayer Studios Inc., Case No. 10-15774 (SMB) (Bankr. S.D.N.Y. Nov. 12, 2010) [Docket No. 124]; In re Blockbuster Inc., Case

No. 10-14997 (BRL) (Bankr. S.D.N.Y. Oct. 20, 2010) [Docket No. 353]; Neff Corp., Case No. 10-12610 (SCC) (Bankr. S.D.N.Y. June 9, 2010) [Docket No. 132]; In re St. Vincent's Catholic Med. Ctrs. of N.Y., Case No. 10-11963 (CGM) (Bankr. S.D.N.Y. May 7, 2010) [Docket No. 222]; In re Uno Rest. Holdings Corp., Case No. 10-10209 (MG) (Bankr. S.D.N.Y. Feb. 17, 2010) [Docket No. 146]. The Debtors submit that the present circumstances warrant similar relief in these Chapter 11 Cases.

34. The Bankruptcy Code also provides a debtor in possession the freedom to obtain unsecured credit and incur unsecured debt in the ordinary course of business without a notice and a hearing. 11 U.S.C. § 364(a); In re Amdura Corp., 75 F.3d at 1447; LNC Invs., Inc. v. First Fid. Bank, N.A., 247 B.R. 38, 45 (S.D.N.Y. 2000); Mulligan v. Sobiech, 131 B.R. 917, 921 (S.D.N.Y. 1991). The Debtors therefore seek authorization, to the extent necessary, to obtain unsecured credit and incur unsecured debt in the ordinary operation of their Cash Management Systems.

35. The Debtors respectfully submit that, for the reasons set forth below, the relief requested herein is both necessary and appropriate to allow the Debtors to successfully prosecute these Chapter 11 Cases, to optimize the Debtors' postpetition business performance and to maximize the value of the Debtors' estates.

**B. Cause Exists for the Court To Approve Debtors' Continued Use of Cash Management System and Existing Bank Accounts**

*(i) Cash Management Systems Are Essential to the Debtors' Ongoing Operations and Restructuring Effort*

36. As described in the Montagner Declaration, the Debtors' businesses and financial affairs require the collection, disbursement and movement of funds through several Bank Accounts. The *Operating Guidelines and Financial Reporting Requirements for Debtors in Possession and Trustees* (the "U.S. Trustee Guidelines") issued by the U.S. Trustee require,

among other things, that, unless the Court orders otherwise, a debtor (a) close all existing bank accounts and open new debtor in possession accounts, (b) maintain a separate debtor in possession account for cash collateral and (c) obtain checks that bear the designation “debtor in possession.” 28 U.S.C. § 586. These requirements are designed to provide a clear line of demarcation between prepetition and postpetition claims and payments and help protect against the inadvertent payment of prepetition claims by preventing banks from honoring checks drawn before the petition date.

37. Strict enforcement of the U.S. Trustee Guidelines in these Chapter 11 Cases, however, would disrupt the ordinary financial operations of the Debtors, reducing efficiencies and causing unnecessary expense. Indeed, bankruptcy courts treat requests for authority to continue utilizing existing cash management systems as a relatively “simple matter.” In re Baldwin-United Corp., 79 B.R. 321, 327 (Bankr. S.D. Ohio 1987). In In re Charter Co., 778 F.2d 617 (11th Cir. 1985), for example, the bankruptcy court entered an order authorizing the debtor and 43 of its subsidiaries “to continue to consolidate the management of their cash as has been usual and customary in the past, and to transfer monies from affiliated entity to entity, including operating entities that are not debtors.” Id. at 620. The Eleventh Circuit Court of Appeals then affirmed a subsequent district court decision denying a creditor’s motion for leave to appeal the bankruptcy court’s cash management order, holding that authorizing the debtors to utilize their prepetition “routine cash management system” was “entirely consistent” with applicable provisions of the Bankruptcy Code. Id. at 621.

38. Accordingly, in large chapter 11 cases, bankruptcy courts in this district often waive these requirements on the grounds that they are impractical and potentially detrimental to a debtor’s postpetition business operations and restructuring efforts. See, e.g., In



re Eastman Kodak Co., Case No. 12-10202 (ALG) (Bankr. S.D.N.Y. Feb. 16, 2012) [Docket No. 376]; In re Sbarro, Inc., Case No. 11-11527 (SCC) (Bankr. S.D.N.Y. May 4, 2011) [Docket No. 161]; In re Great Atl. & Pac. Tea Co., Inc., Case No. 10-24549 (RDD) (Bankr. S.D.N.Y. Feb. 7, 2011) [Docket No. 733]; In re InSight Health Servs. Holdings Corp., Case No. 10-16564 (AJG) (Bankr. S.D.N.Y. Jan. 4, 2011) [Docket No. 97]; In re Metro-Goldwyn-Mayer Studios Inc., Case No. 10-15774 (SMB) (Bankr. S.D.N.Y. Nov. 12, 2010) [Docket No. 124]; In re Blockbuster Inc., Case No. 10-14997 (BRL) (Bankr. S.D.N.Y. Oct. 20, 2010) [Docket No. 353]; Neff Corp., Case No. 10-12610 (SCC) (Bankr. S.D.N.Y. June 9, 2010) [Docket No. 132]; In re St. Vincent's Catholic Med. Ctrs. of N.Y., Case No. 10-11963 (CGM) (Bankr. S.D.N.Y. May 7, 2010) [Docket No. 222]; In re Uno Rest. Holdings Corp., Case No. 10-10209 (MG) (Bankr. S.D.N.Y. Feb. 17, 2010) [Docket No. 146]. The Debtors respectfully submit that similar authorization is appropriate in these Chapter 11 Cases.

39. The Debtors have utilized the Cash Management Systems in their current form for years as part of their ordinary and usual business practices. Requiring the Debtors to maintain separate accounts would decentralize their Cash Management Systems because, given the corporate and financial structure of the Debtors, it would be difficult to establish an entirely new cash management system for each Debtor or group of Debtors. To comply with the U.S. Trustee Guidelines, the Debtors also would need to execute new signatory cards and depository agreements and create a new system for manually issuing checks and paying postpetition obligations.<sup>8</sup> The delays that would result from opening these accounts, revising cash management procedures, and instructing customers to redirect payments would disrupt the

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<sup>8</sup> Notwithstanding anything herein to the contrary, the Debtors reserve their rights to close the prepetition Bank Accounts and open new accounts as may be necessary in the Debtors' business judgment. The Debtors will give notice, however, to the U.S. Trustee and any statutory committee that may be appointed in these Chapter 11 Cases prior to opening or closing a bank account.

Debtors' business operations at this critical time, have little or no benefit to their respective estates, and potentially destroy value.

40. Courts have noted that an integrated cash management system "allows efficient utilization of cash resources and recognizes the impracticalities of maintaining separate cash accounts for the many different purposes that require cash." In re Columbia Gas Sys., Inc., 136 B.R. 930, 934 (Bankr. D. Del. 1992), aff'd in part, rev'd in part sub nom., Official Comm. of Unsecured Creditors of Columbia Gas Transmission Corp. v. Columbia Gas Sys., Inc. (In re Columbia Gas Sys.), Nos. 91-803, 91-804, 1992 U.S. Dist. LEXIS 9460 (D. Del. July 6, 1992), aff'd in part, rev'd in part, 997 F.2d 1039 (3d Cir. 1993). As a result, courts have concluded that the requirement to maintain all accounts separately "would be a huge administrative burden and economically inefficient." Columbia Gas, 997 F.2d at 1061; see also Southmark Corp. v. Grosz (In re Southmark Corp.), 49 F.3d 1111, 1114 (5th Cir. 1995) (cash management system allows debtor "to administer more efficiently and effectively its financial operations and assets").

(ii) *Maintaining Existing Cash Management Systems Will Not Harm Parties in Interest*

41. Approval of the Cash Management Systems will greatly facilitate the Debtors' transition into chapter 11 by, among other things, avoiding administrative inefficiencies and expenses and minimizing delays in payment of postpetition obligations. Accordingly, the Debtors respectfully submit that parties in interest will not be harmed by the continued maintenance of the existing Cash Management Systems, including the Bank Accounts, because the Debtors have implemented appropriate mechanisms to ensure that payments will not be made on any obligations incurred before the Petition Date, other than those authorized by the Court. In light of these protective measures, the Debtors submit that maintaining the Cash Management Systems is in the best interests of their respective estates and creditors.

42. Moreover, the Cash Management Systems are similar to those commonly employed by corporate entities of comparable size and complexity. Large, multi-entity businesses use such systems because of the numerous benefits provided, including, without limitation, the ability to: (a) quickly create status reports on the location and amount of funds, which allows management to track and control such funds, (b) ensure cash availability and (c) reduce administrative costs through a centralized method of coordinating the collection and movement of funds. Granting the Debtors authority to continue using the Cash Management Systems necessarily enhances the value of the Debtors' businesses and will help facilitate a smooth transition into these Chapter 11 Cases.

*(iii) Court Should Authorize Debtors To Continue Customary Transactions*

43. The Debtors request further relief from the requirement in the U.S. Trustee Guidelines that all receipts and all disbursements of estate funds be by check with a notation representing the reason for the disbursement. Given the Debtors' current operations, it is necessary for the Debtors to conduct transactions by debit, wire, automated clearing house ("ACH") transfers, ACH credit, ACH debit, corporate credit cards and other similar methods, as discussed herein. To deny the Debtors the opportunity to conduct transactions by these methods would likely interfere with the Debtors' performance of their contracts and unnecessarily distract the Debtors from their business operations, as well as create additional costs to be borne by the Debtors and their creditors. To effect this relief, the Debtors request that the Cash Management Banks be authorized and directed to continue to pay, honor and execute any and all debit instructions, wires and ACH payments issued and drawn on the Bank Accounts after the Petition Date.

- (iv) *Court Should Authorize Cash Management Banks To Continue To Maintain, Service and Administer Debtors' Bank Accounts in Ordinary Course of Business*

44. The Debtors respectfully request that the Cash Management Banks<sup>9</sup> be authorized and directed to continue to maintain, service and administer the Bank Accounts without interruption and in the ordinary course. In this regard, the Cash Management Banks should be authorized and directed to receive, process, honor and pay any and all checks, ACH payments and other instructions and drafts payable through, drawn or directed on the Bank Accounts after the Petition Date by the holders, makers or other parties entitled to issue instructions with respect thereto; provided, however, that any check, advance, draft or other notification that a Debtor advises a Cash Management Bank to have been drawn, issued or otherwise presented prior to the Petition Date may be honored by the Cash Management Banks only to the extent authorized by order of the Court.

45. The Debtors further request that the Cash Management Banks be authorized and directed to accept and honor all representations from the Debtors as to which checks, drafts, wires, credit card or ACH payments should be honored or dishonored consistent with any order of this Court and governing law, whether such checks, drafts, wires, credit card, or automated clearing house payments are dated prior to or subsequent to the Petition Date. The Debtors also request that no Cash Management Bank that honors a prepetition check or other item drawn on any account that is the subject of this Motion (a) at the direction of the Debtors, (b) in a good faith belief that the Court has authorized such prepetition check or item to be honored or (c) as a result of an innocent mistake made despite implementation of reasonable procedures, be deemed to be liable to the Debtors or to their estates on account of such

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<sup>9</sup> All but two of the Debtors' Cash Management Banks are included on the U.S. Trustee's list of authorized bank depositories. RBC is insured by the Federal Deposit Insurance Corporation (the "FDIC") in the United States and the Canadian Deposit Insurance Corporation (the "CDIC") in Canada. Scotiabank is insured by the CDIC.

prepetition check or other item being honored after the Petition Date. The Debtors respectfully submit that such relief is reasonable and appropriate because the Cash Management Banks are not in a position to independently verify or audit whether a particular item may be paid in accordance with a court order or otherwise.

46. In the ordinary course, the Cash Management Banks charge, and the Debtors pay, honor or allow the deduction from the appropriate account, certain service and other fees, costs, charges and expenses (collectively, the “Bank Fees”). As of the Petition Date, Bank Fees in the amount of approximately \$1,200 were outstanding. The Debtors respectfully request that the Cash Management Banks be given the authority to (a) continue to charge the Debtors the Bank Fees and (b) charge back to the Bank Accounts returned items,<sup>10</sup> whether such items are dated prior to, on or subsequent to the Petition Date, in the ordinary course.

47. The Debtors represent that if the relief requested herein is granted, they will implement appropriate mechanisms to ensure that no payments will be made on any debts incurred by them prior to the Petition Date, other than those authorized by the Court. To prevent the possible inadvertent unauthorized payment of claims that arose prior to the Petition Date, the Debtors will work closely with the Cash Management Banks to ensure that appropriate procedures are in place to prevent checks issued prior to the Petition Date from being honored without the Court’s approval. The Debtors will also skip or number several hundred checks in their stock to minimize any confusion between prepetition and postpetition check numbers. The Debtors further note that the Cash Management Banks will likely have setoff rights with respect to the Bank Fees. Thus, payment of prepetition Bank Fees will not alter any rights of unsecured creditors.

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<sup>10</sup> Chargebacks include ordinary course banking fees for services related to, among other things, check processing, wire processing, online reporting and the lockbox. The Debtors anticipate such chargebacks to amount to approximately \$1,200.

(v) *Cause Exists To Authorize the Debtors' Financial Institutions To Honor Checks and Electronic Fund Transfers*

48. To facilitate implementation of the above-requested relief, the Debtors respectfully request that all applicable banks and other financial institutions be authorized to receive, process, honor and pay all checks presented for payment and to honor all electronic payment requests made by the Debtors related to the postpetition obligations described herein. The Debtors further request that all such banks and financial institutions be authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved pursuant to this Motion.

49. The Debtors represent that, if the relief requested herein is granted, they will implement appropriate mechanisms to ensure that no payments will be made on any debts incurred by them before the Petition Date, other than those authorized by the Court. Specifically, procedures the Debtors have implemented and will implement include (a) notification to the Cash Management Banks of all prepetition checks that should not be honored, (b) segregation of the Debtors' accounts payables into prepetition and postpetition, (c) training of the Debtors' accounting staff on procedures for identifying and segregating prepetition obligations and (d) specific authorization procedures to issue a check for any prepetition liabilities to assure that it is authorized by a specific Court order. Moreover, the Debtors will serve a copy of this Motion with exhibits and any order entered approving the relief requested herein on the Cash Management Banks that make disbursements under the Cash Management System as soon as practicable. The Debtors also have served or will serve upon such Cash Management Banks a copy of any pleadings filed by the Debtors on the Petition Date seeking to honor prepetition obligations.

**C. Debtors Should Be Granted Authority To Use Existing Business Forms and Checks**

50. As described above, in the ordinary course of business, the Debtors use numerous varieties of Business Forms. To minimize expenses to their chapter 11 estates, the Debtors request authority to continue to use all Business Forms as such forms were in existence immediately before the Petition Date, without reference to the Debtors' status as debtors in possession. The Debtors also request authorization to use their existing check stock without the "debtor in possession" label for checks that they manually write until such check stock runs out. As soon as practicable after the Petition Date, the Debtors will include "debtor in possession" on the checks they print electronically. Upon depletion of the Debtors' Business Forms, the Debtors will obtain new Business Forms stock reflecting their status as debtors in possession.

51. By virtue of the nature and scope of the Debtors' business operations, it is important that the Debtors be permitted to continue to use their existing checks and other business forms without alteration or change, except as requested herein. Indeed, because parties doing business with the Debtors undoubtedly will be aware of the Debtors' status as debtors in possession as a result of the publicized nature of these Chapter 11 Cases and the communications and notice of the commencement of these Chapter 11 Cases that the Debtors intend to distribute to such parties, changing business forms is unnecessary and unduly burdensome. See, e.g., In re Eastman Kodak Co., Case No. 12-10202 (ALG) (Bankr. S.D.N.Y. Feb. 16, 2012) [Docket No. 376]; In re Sbarro, Inc., Case No. 11-11527 (SCC) (Bankr. S.D.N.Y. May 4, 2011) [Docket No. 161]; In re Great Atl. & Pac. Tea Co., Inc., Case No. 10-24549 (RDD) (Bankr. S.D.N.Y. Feb. 7, 2011) [Docket No. 733].

**D. Cause Exists for Waiving Investment and Deposit Guidelines of Section 345 of Bankruptcy Code**

52. Section 345(a) of the Bankruptcy Code authorizes deposit or investment of money of estates, such as cash, as “will yield the maximum reasonable net return on such money, taking into account the safety of such deposit or investment.” 11 U.S.C. § 345(a). While section 345(b) of the Bankruptcy Code generally requires that, with respect to investments other than investments “insured or guaranteed by the United States or by a department, agency or instrumentality of the United States or backed by the full faith and credit of the United States,” the estate must require a bond in favor of the United States secured by the undertaking of a U.S. Trustee-approved corporate surety, it allows the court to dispense with this limitation “for cause.” 11 U.S.C. § 345(b)(2).

53. It is within the Court’s discretion to waive or modify the investment guidelines of section 345(b) of the Bankruptcy Code for “cause.” See 11 U.S.C. § 354(b); see also 140 Cong. Rec. H10752-01 (Oct. 4, 1994) (noting that section 345(b) investment guidelines may be “wise in the case of a smaller debtor with limited funds that cannot afford a risky investment to be lost, [but] can work to needlessly handcuff larger, more sophisticated debtors”); In re Serv. Merch. Co., 240 B.R. 894, 896-97 (Bankr. M.D. Tenn. 1999) (concluding that “cause” existed to waive requirements of section 345 because debtors were “large, sophisticated [companies] with a complex cash management system,” and the benefit of waiving the requirements of section 345(b) far outweighed any potential harm to the estate, and “would ‘needlessly handcuff’ [the] debtors’ reorganization efforts.”).

54. In determining whether the “for cause” standard has been satisfied, the Court should consider a “totality of the circumstances,” utilizing the following factors:

- (a) the sophistication of the debtor’s business;



- (b) the size of the debtor's business operations;
- (c) the amount of the investments involved;
- (d) the bank ratings (Moody's and Standard & Poor) of the financial institutions where the debtor in possession funds are held;
- (e) the complexity of the case;
- (f) the safeguards in place within the debtor's own business of insuring the safety of the funds;
- (g) the debtor's ability to reorganize in the face of a failure of one or more of the financial institutions;
- (h) the benefit to the debtor;
- (i) the harm, if any, to the estate and
- (j) the reasonableness of the debtor's request for relief from section 345(b) requirements in light of the overall circumstances of the case.

In re Serv. Merch. Co., 240 B.R. at 896.

55. Here, "cause" exists to waive the requirements of section 345(b) of the Bankruptcy Code. The Investment Accounts only invest in (a) U.S. Government Securities and (b) securities that carry high ratings from S&P's and Moody's. In other words, an investment in the Investment Accounts carries the same or similar credit risk as a direct investment in U.S. Government Securities.

56. If the Debtors are limited to direct investments in U.S. Government Securities, they would need to work with their current investment managers to establish (a) a new account to trade the securities and (b) new associated controls and procedures. The risk of a compliance breakdown in connection with these activities is at least as large as any incremental risk posed by investment in the Investment Accounts, and the costs associated with these activities would likely exceed the yield on the investments. The Debtors are part of a large,

sophisticated enterprise, and their operations team has determined that investment in the Investment Accounts will benefit the Debtors and the value of the Debtors' estates.

57. In other large, well-publicized chapter 11 cases, courts in this district have liberally construed the requirement of section 345(b) of the Bankruptcy Code that debtors in possession obtain a bond from any entity with which their money is deposited or invested. In those instances, courts in this district have waived the requirements of section 345(b) of the Bankruptcy Code and replaced them with alternative procedures. See, e.g., In re Great Atl. & Pac. Tea Co., Inc., Case No. 10-24549 (RDD) (Bankr. S.D.N.Y. Feb. 7, 2011) [Docket No. 733]; In re InSight Health Servs. Holdings Corp., Case No. 10-16564 (AJG) (Bankr. S.D.N.Y. Jan. 4, 2011) [Docket No. 97]; In re Metro-Goldwyn-Mayer Studios Inc., Case No. 10-15774 (SMB) (Bankr. S.D.N.Y. Nov. 12, 2010) [Docket No. 124]; In re St. Vincent's Catholic Med. Ctrs. of N.Y., Case No. 10-11963 (CGM) (Bankr. S.D.N.Y. May 7, 2010) [Docket No. 222]; In re Uno Rest. Holdings Corp., Case No. 10-10209 (MG) (Bankr. S.D.N.Y. Feb. 17, 2010) [Docket No. 146]; In re Reader's Digest Ass'n, Inc., Case No. 09-23529 (RDD) (Bankr. S.D.N.Y. Nov. 20, 2009) [Docket No. 306]; In re ION Media Networks, Inc., Case No. 09-13125 (JMP) (Bankr. S.D.N.Y. July 2, 2009) [Docket No. 130]; In re Tronox Inc., Case No. 09-10156 (ALG) (Bankr. S.D.N.Y. Feb. 6, 2009) [Docket No. 146]. The Debtors respectfully submit that the present circumstances warrant similar relief in these Chapter 11 Cases.

**E. Debtors Should Be Authorized To Continue Performing Under Intercompany Transactions, Including Intercompany Setoffs, and Should Afford Administrative Expense Priority to Intercompany Claims**

58. As described above and in the Montagner Declaration, continuation of the Intercompany Transactions is in the best interests of the Debtors' estates and their creditors, and the Debtors seek authority to continue engaging in such Intercompany Transactions in the ordinary course of business, including those Intercompany Transactions relating to the Inc.

Group's funding of all ordinary course obligations arising in each of the Chapter 11 Cases, through the use of the unencumbered cash.<sup>11</sup> If authority is granted, the Debtors will continue to maintain records of Intercompany Transactions (*i.e.*, all transfers made by the Inc. Group on behalf of the LP Group or the LP Group on behalf of the Inc. Group), including records of all current intercompany accounts receivables and payables.

59. The continued performance of the ordinary course Intercompany Transactions is integral to ensure the Debtors' ability to operate their businesses as debtors in possession. First, were the Debtors to obtain (to the extent at all possible) the services they currently receive from other Debtors pursuant to the Intercompany Transactions on an isolated per-company basis (which services include general management and administration, satellite usage and satellite operations), aside from incurring excessive financial burdens in identifying appropriate providers of these services and entering into individual agreements for providing these services, the Debtors would be required to divert their attention from their restructuring efforts and the desired smooth transition into operating as debtors in possession. Moreover, as discussed above, the Prepetition LP Lenders have not consented to the Debtors' use of cash collateral. The Debtors thus have no recourse but to use the approximately \$15 million cash on hand at the Inc. Group to, among other things, engage in ongoing discussions with the Federal Communications Commission regarding the deployment of the Debtors' network, maintain business relationships with their vendors, suppliers and customers, pay their employees and otherwise finance their operations in the interim while the Debtors attempt to negotiate consensual use of cash collateral with the Prepetition LP Lenders or seek Court authorization to

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<sup>11</sup> Because the Debtors engage in Intercompany Transactions on a regular basis and such transactions are common among enterprises similar to the Debtors, the Debtors believe that the Intercompany Transactions are ordinary course transactions within the meaning of section 363(c)(1) of the Bankruptcy Code, and thus, do not require the Court's approval. Nonetheless, out of an abundance of caution, the Debtors are seeking express authority to engage in such transactions after the Petition Date.

use such cash collateral. Funding each of these expenditures is necessary to the Debtors' ability to preserve and maintain their going-concern values for the benefit of all parties in interest.

60. To ensure that each individual Debtor will not, at the expense of creditors, fund the operations of another Debtor or another affiliated entity, the Debtors respectfully request that the Court, pursuant to sections 503(b)(1) and 364(b) of the Bankruptcy Code and subject to the provisions of any order authorizing the use of cash collateral in these Chapter 11 Cases, authorize the Debtors to treat all Intercompany Claims arising after the Petition Date in the ordinary course of business as administrative expenses of the relevant Debtor. If the Court authorizes the Debtors to treat Intercompany Claims as administrative expenses, then each entity utilizing funds flowing through the Cash Management Systems should continue to bear ultimate repayment responsibility for such ordinary course claims. No Intercompany Transactions currently take place between the Debtors and their non-Debtor affiliates, and no Intercompany Transactions are expected to take place between the Debtors and their non-Debtor affiliates after the Petition Date. If, however, an Intercompany Transaction between a Debtor and non-Debtor affiliate becomes necessary after the Petition Date, the Debtors will seek the Court's approval of the consummation of such transaction.

61. Administrative expense treatment for intercompany transactions, as requested here, has been granted in other comparable chapter 11 cases in this district. See, e.g., In re Eastman Kodak Co., Case No. 12-10202 (ALG) (Bankr. S.D.N.Y. Feb. 16, 2012) [Docket No. 376]; In re Sbarro, Inc., Case No. 11-11527 (SCC) (Bankr. S.D.N.Y. May 4, 2011) [Docket No. 161]; In re Great Atl. & Pac. Tea Co., Inc., Case No. 10-24549 (RDD) (Bankr. S.D.N.Y. Feb. 7, 2011) [Docket No. 733]; In re InSight Health Servs. Holdings Corp., Case No. 10-16564 (AJG) (Bankr. S.D.N.Y. Jan. 4, 2011) [Docket No. 97]; In re Metro-Goldwyn-Mayer Studios

Inc., Case No. 10-15774 (SMB) (Bankr. S.D.N.Y. Nov. 12, 2010) [Docket No. 124]; In re Reader's Digest Ass'n, Inc., Case No. 09-23529 (RDD) (Bankr. S.D.N.Y. Nov. 20, 2009) [Docket No. 306]; In re ION Media Networks, Inc., Case No. 09-13125 (JMP) (Bankr. S.D.N.Y. July 2, 2009) [Docket No. 130]; In re Chemtura Corp., Case No. 09-11233 (REG) (Bankr. S.D.N.Y. May 1, 2009) [Docket No. 295]; In re Tronox Inc., Case No. 09-10156 (ALG) (Bankr. S.D.N.Y. Feb. 6, 2009) [Docket No. 146].

62. In addition, the Court should authorize the Debtors to preserve and exercise intercompany setoff rights. Section 553(a) of the Bankruptcy Code provides:

Except that otherwise provided in this section and in sections 362 and 363 of this title, this title does not affect any right of a creditor to offset a mutual debt owing by such creditor to the debtor that arose before the commencement of the case under this title against a claim of such creditor against the debtor that arose before the commencement of the case.

11 U.S.C. § 553(a).

63. A creditor need only establish two elements before a setoff may be asserted – mutuality and timing. See Official Comm. of Unsecured Creditors v. Mfrs. & Traders Trust Co. (In re Bennett Funding Grp, Inc.), 212 B.R. 206, 212 (B.A.P. 2d Cir. 1997), aff'd, 146 F.3d 136 (2d Cir. 1998); see also Verco Indus. v. Spartan Plastics (In re Verco Indus.), 704 F.2d 1134, 1139 (9th Cir. 1983); In re Lundell Farms, 86 B.R. 582, 584 (Bankr. W.D. Wis. 1988). Although courts have not uniformly defined the elements of mutuality, most courts require the following elements: that the debts are (a) owed by the same parties and (b) in the same right and capacity. See 5 Collier on Bankruptcy ¶ 553.03[3][a] & n.69 (Lawrence P. King ed., 15th rev. ed. 2008) (citing, *inter alia*, Davidovich v. Welton (In re Davidovich), 901 F.2d 1533, 1537 (10th Cir. 1990); Lubman v. Sovran Bank, N.A. (In re A & B Homes, Ltd.), 98 B.R. 243, 248 (Bankr. E.D. Va. 1989)). Timing requires that both claims arise either prepetition or

postpetition. See Packaging Indus. Grp, Inc. v. Dennison Mfg. Co. (In re Sentinel Prods. Corp.), 192 B.R. 41, 45 (N.D.N.Y. 1996); Scherling v. Hellman Elec. Corp. (In re Westchester Structures Inc.), 181 B.R. 730, 739 (Bankr. S.D.N.Y. 1995); United States v. Gordon Sel-Way, Inc. (In re Gordon Sel-Way, Inc.), 239 B.R. 741, 751-55 (E.D. Mich. 1999), aff'd, 270 F.3d 280 (6th Cir. 2001); Mohawk Indus., Inc. v. United States (In re Mohawk Indus., Inc.), 82 B.R. 174, 178-79 (Bankr. D. Mass. 1987).

64. The Cash Management Systems allow the Debtors to track all obligations owing between related entities and thereby ensure that all setoffs of Intercompany Claims will meet both the mutuality and timing requirements of section 553 of the Bankruptcy Code. Therefore, the Debtors respectfully request that the Debtors and their non-Debtor affiliates be expressly authorized to set off postpetition obligations arising on account of Intercompany Transactions between a Debtor and another Debtor or between a Debtor and a non-Debtor affiliate.

65. In light of the foregoing, the Debtors submit that the relief requested herein is necessary and appropriate, is in the best interests of their estates and creditors and should be granted in all respects.

**Debtors Satisfy Bankruptcy Rule 6003**

66. Bankruptcy Rule 6003 provides that, “[e]xcept to the extent that relief is necessary to avoid immediate and irreparable harm, the court shall not, within 21 days after the filing of the petition, issue an order granting . . . a motion to use, sell, lease, or otherwise incur an obligation regarding property of the estate . . . .” Fed R. Bankr. P. 6003(b). The Debtors submit that, ultimately, any disruption to the Cash Management Systems or the Bank Accounts would unnecessarily distract the Debtors’ ability to administer these Chapter 11 Cases and implement

restructuring measures, thereby harming the Debtors' estates and their creditors. Accordingly, the Debtors satisfy the "immediate and irreparable harm" standard of Bankruptcy Rule 6003(b).

**Waiver of Bankruptcy Rule 6004(a) and 6004(h)**

67. To implement the foregoing successfully, the Debtors respectfully request a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the fourteen (14)-day stay of an order authorizing the use, sale or lease of property under Bankruptcy Rule 6004(h). Pursuant to Bankruptcy Rule 6004(h), "[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise." Fed. R. Bankr. P. 6004(h). As set forth above, the payments proposed herein are essential to prevent potentially irreparable damage to the Debtors' operations, value and ability to reorganize. Accordingly, the Debtors submit that ample cause exists to justify a waiver of the 14-day stay imposed by Bankruptcy Rule 6004(h), to the extent it applies.

**Motion Practice**

68. This Motion includes citations to the applicable rules and statutory authorities upon which the relief requested herein is predicated, and a discussion of their application to this Motion. Accordingly, the Debtors submit that this Motion satisfies Local Rule 9013-1(a).

**Notice**

69. The Debtors have caused notice of this Motion to be provided by electronic mail, facsimile, regular or overnight mail and/or hand delivery to (a) the U.S. Trustee, (b) the entities listed on the Consolidated List of Creditors Holding the 20 Largest Unsecured Claims filed pursuant to Bankruptcy Rule 1007(d), (c) counsel to the agents for the Debtors' prepetition secured lenders, (d) counsel to the ad hoc secured group of Prepetition LP Lenders

(as defined in the Montagner Declaration), (e) counsel to Harbinger Capital Partners, (f) the Internal Revenue Service, (g) the United States Attorney for the District of New York, (h) the Federal Communications Commission, (i) Industry Canada and (j) the Cash Management Banks. Due to the urgency of the circumstances surrounding this Motion and the nature of the relief requested herein, the Debtors respectfully submit that no other or further notice is required or necessary.

**No Previous Request**

70. No prior motion for the relief requested herein has been made by the Debtors to this or any other court.

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WHEREFORE, for the reasons set forth above and in the Montagner Declaration, the Debtors respectfully request entry of an order, substantially in the form attached hereto as Exhibit C, (a) authorizing the Debtors to (i) continue to use their respective Cash Management Systems, Bank Accounts and Business Forms, (ii) open new debtor in possession bank accounts with authorized depository banks and close any existing Bank Accounts as the Debtors deem necessary and appropriate in their sole discretion and (iii) continue to perform Intercompany Transactions in the ordinary course, including any related setoffs, (b) waiving the investment guidelines of section 345(b) of the Bankruptcy Code, (c) authorizing the Cash Management Banks to (i) continue to maintain, service and administer the Bank Accounts, and (ii) debit the Debtors' accounts in the ordinary course of business on account of: (1) all checks drawn on the Bank Accounts, which are cashed at the Cash Management Banks or exchanged for cashier's checks by the payees thereof prior to the Petition Date, (2) all checks or other items deposited in one of the Bank Accounts at the Cash Management Banks prior to the Petition Date, which have been dishonored or returned unpaid for any reason, together with any fees and costs in connection therewith and (3) all undisputed prepetition amounts outstanding as of the date hereof, if any, owed to any Cash Management Bank as service charges for the maintenance of any aspect of the applicable Cash Management System and (d) granting such other and further relief as the Court may deem just and proper.

New York, New York  
Dated: May 14, 2012

/s/ Matthew S. Barr  
Paul S. Aronzon (*pro hac vice* pending)  
Matthew S. Barr  
Steven Z. Szanzer  
Karen Gartenberg  
MILBANK, TWEED, HADLEY & MCCLOY LLP  
One Chase Manhattan Plaza  
New York, NY 10005-1413  
(212) 530-5000

*Proposed Counsel to Debtors and Debtors in Possession*

**Exhibit A**

**Bank Accounts**

Entity	Bank	Account Number	Type	Contact	Address
LightSquared Inc.	SunTrust Bank	XXXXXXXXXX2103	Operating/ Disbursement	Matt Pallo ph (703) 442-1617 fax (703) 442-1626	8330 Boone Blvd. Ste 700 Vienna, VA 22182
LightSquared Inc.	RBC	XXX X3416	Investment	Marina Galli ph (415) 445-8519 fax (415) 445-8452	345 California St. San Francisco, CA 94104
LightSquared Inc.	Bank of America	XXXXXXXXXX4676	Restricted CD	Vicky Gindes (301) 517-3185	1101 Wootton Pkwy 4th fl. Rockville, MA 20852
LightSquared LP	SunTrust Bank	XXXXXX3272	Operating/ Disbursement	Matt Pallo ph (703) 442-1617 fax (703) 442-1626	8330 Boone Blvd. Ste 700 Vienna, VA 22182
LightSquared LP	RBC	XXX X3498	Investment	Marina Galli ph 415 445-8519 fax 415 445-8452	345 California St. San Francisco, CA 94104
LightSquared LP	Morgan Stanley	XXXXXX0350	Investment	Matt O'Haren 415-955-1577	555 California St. 35th Fl San Francisco, CA 94104
LightSquared LP	Comerica	XXXXXX9959	Restricted	Gina M. Gautier (703) 464-7237 (703) 467-9308	11921 Freedom Drive Suite 920 Reston, VA 20190
LightSquared LP	SunTrust Bank	X3051CAD	Inactive Foreign Exchange Deposit	Michael Pensky Ph 877-726-9733 Fax 404-926-5777	3333 Peachtree Rd NE, 11th Fl Atlanta, GA 30326
LightSquared LP	SunTrust Bank	X3051EUR	Inactive Foreign Exchange Deposit	Michael Pensky Ph 877-726-9733 Fax 404-926-5777	3333 Peachtree Rd NE, 11th Fl Atlanta, GA 30326
LightSquared LP	Wells Fargo	XX5576EUR	Foreign Exchange Deposit	675576EUR	301 S. College, Fl 07 Charlotte, NC 28202
LightSquared Corp.	ScotiaBank	XXXX XX9411	U.S. Dollar Disbursement	Borys Terebenec (416) 866-7704 or Lidia Dias (647) 288-1858 ext 81802	44 King Street West Toronto, ON Canada M5H 1H1
LightSquared Corp.	ScotiaBank	XXXXXX XXX15 18	Investment	Borys Terebenec (416) 866-7704 or Lidia Dias (647) 288-1858 ext 81802	44 King Street West Toronto, ON Canada M5H 1H1
LightSquared Corp.	SunTrust Bank	XXXXXXXXXX9842	Canadian Dollar Disbursement	Matt Pallo ph (703) 442-1617 fax (703) 442-1626	8330 Boone Blvd. Ste 700 Vienna, VA 22182

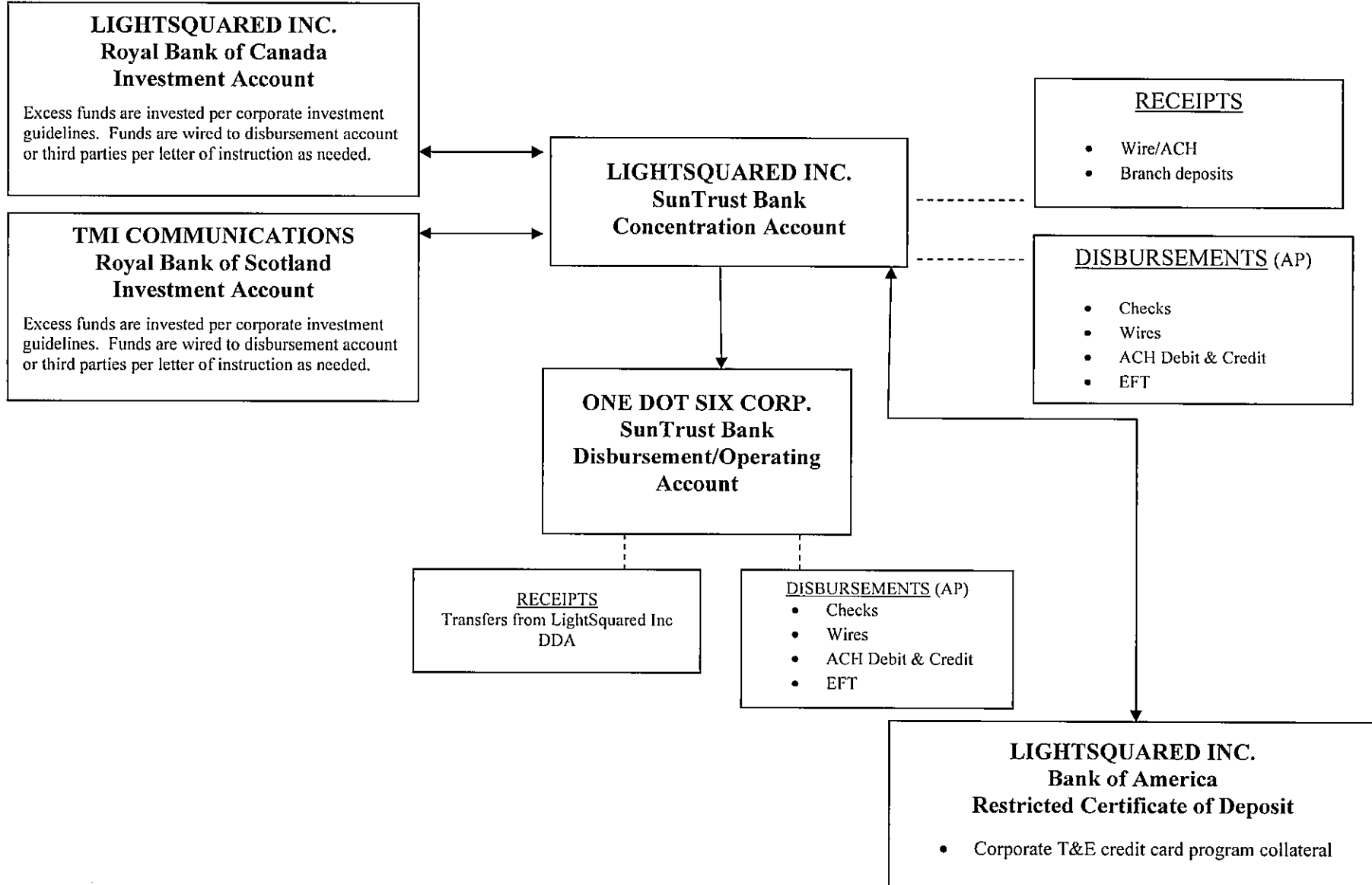
Entity	Bank	Account Number	Type	Contact	Address
One Dot Six Corp.	SunTrust Bank	XXXXXXXXXX3130	Operating/ Disbursement	Matt Pallo ph (703) 442-1617 fax (703) 442-1626	8330 Boone Blvd. Ste 700 Vienna, VA 22182
LightSquared Network LLC	SunTrust Bank	XXXXXXXXXX9354	Operating/ Disbursement	Matt Pallo ph (703) 442-1617 fax (703) 442-1626	8330 Boone Blvd. Ste 700 Vienna, VA 22182
TMI Communications Delaware, Limited Partnership	RBC	XXX X3506	Investment	Marina Galli ph 415 445-8519 fax 415 445-8452	345 California St. San Francisco, CA 94104

**Exhibit B-1**

**Chart of Inc. Group Cash Management System**

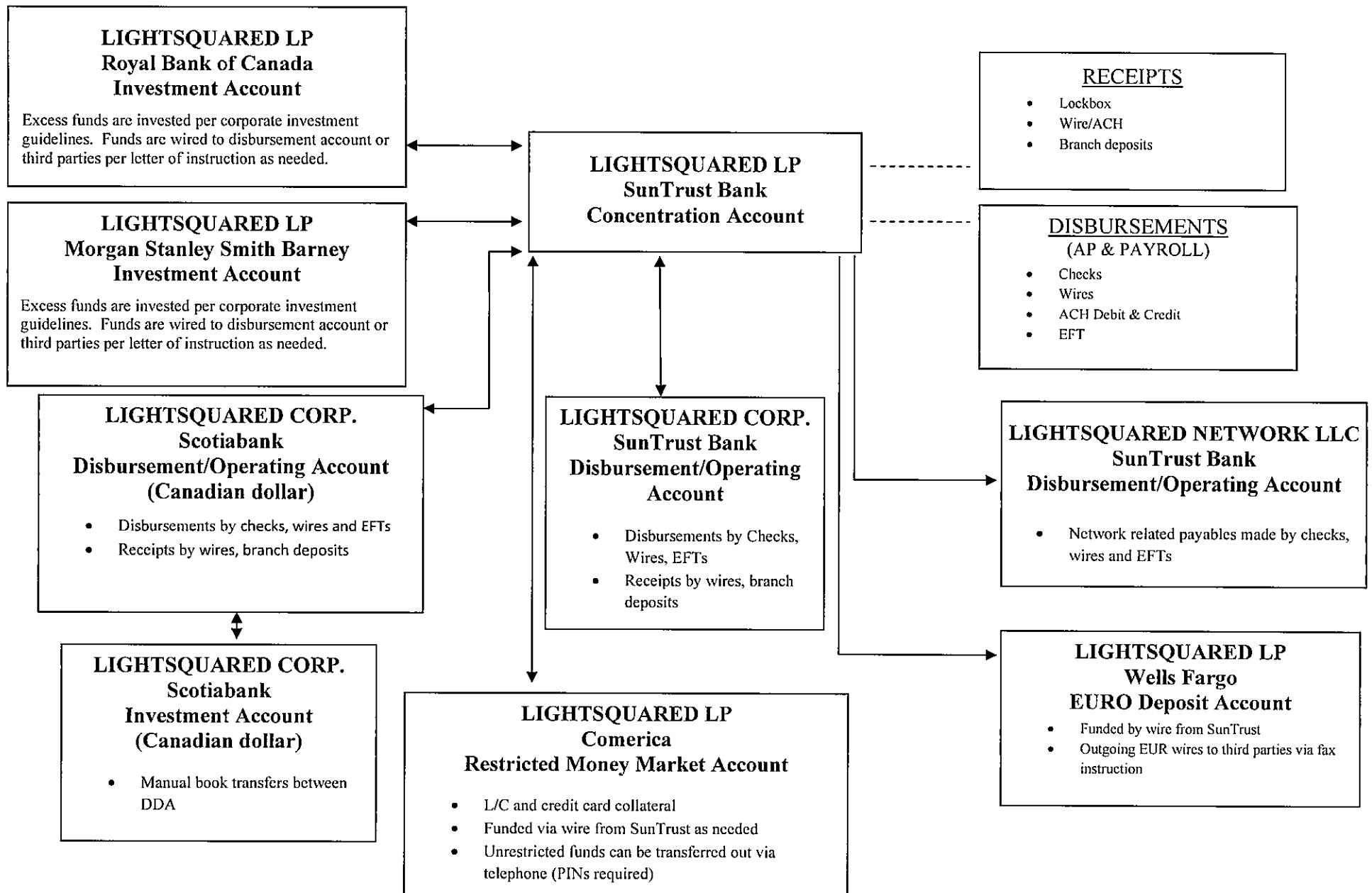
**INC. GROUP**

**CASH MANAGEMENT SYSTEM**



**Exhibit B-2**

**Chart of LP Group Cash Management System**

**LP GROUP****CASH MANAGEMENT SYSTEM**



**Exhibit C**

**Proposed Interim Order**

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

	)				
In re:	)				Chapter 11
	)				
LIGHTSQUARED INC., <i>et al.</i> ,	)				Case No. 12-_____ (___)
	)				
Debtors. <sup>1</sup>	)				Joint Administration Requested
	)				

**INTERIM ORDER (A) AUTHORIZING DEBTORS TO (I) CONTINUE USING  
EXISTING CASH MANAGEMENT SYSTEMS, BANK ACCOUNTS AND  
BUSINESS FORMS AND (II) CONTINUE INTERCOMPANY TRANSACTIONS, (B)  
PROVIDING POSTPETITION INTERCOMPANY CLAIMS ADMINISTRATIVE  
EXPENSE PRIORITY, (C) AUTHORIZING DEBTORS' BANKS TO HONOR  
ALL RELATED PAYMENT REQUESTS AND (D) WAIVING INVESTMENT  
GUIDELINES OF SECTION 345(B) OF BANKRUPTCY CODE**

Upon the motion (the "Motion")<sup>2</sup> of LightSquared Inc. and certain of its affiliates, as debtors and debtors in possession (collectively, the "Debtors") in the above-captioned chapter 11 cases (the "Chapter 11 Cases"), for entry of an interim order (the "Interim Order"), pursuant to sections 105(a), 345, 363, 364, 503, 507, 1107 and 1108 of title 11 of the United States Code §§ 101-1532 (as amended, the "Bankruptcy Code") and Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), (a) authorizing the Debtors to

(i) continue use of their existing cash management systems, bank accounts and business forms,

(ii) open new debtor in possession bank accounts with authorized depository banks or close any

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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 or foreign tax or registration identification number, are: LightSquared Inc. (8845), LightSquared Investors Holdings Inc. (0984), One Dot Four Corp. (8806), One Dot Six Corp. (8763), SkyTerra Rollup LLC (N/A), SkyTerra Rollup Sub LLC (N/A), SkyTerra Investors LLC (N/A), TMI Communications Delaware, Limited Partnership (4456), LightSquared GP Inc. (6190), LightSquared LP (3801), ATC Technologies, LLC (3432), LightSquared Corp. (1361), LightSquared Finance Co. (6962), LightSquared Network LLC (1750), LightSquared Inc. of Virginia (9725), LightSquared Subsidiary LLC (9821), Lightsquared Bermuda Ltd. (7247), SkyTerra Holdings (Canada) Inc. (0631), SkyTerra (Canada) Inc. (0629) and One Dot Six TVCC Corp. (0040). The location of the debtors' corporate headquarters is 450 Park Avenue, Suite 2201, New York, NY 10022.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Motion or the Montagner Declaration, as applicable.

existing bank accounts as the Debtors deem necessary and appropriate in their sole discretion and (iii) continue performing ordinary course Intercompany Transactions (as defined below), (b) waiving the investment guidelines of section 345(b) of the Bankruptcy Code and (c) scheduling a final hearing (the "Final Hearing") to consider entry of an order granting this and other relief on a permanent basis (the "Final Order") granting the relief provided in the Interim Order on a permanent basis and the additional relief described in this Motion; and upon the Montagner Declaration; and it appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and it appearing that this proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and it appearing that venue of this proceeding and the Motion in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and notice of the Motion appearing adequate and appropriate under the circumstances; and the Court having found that no other or further notice is needed or necessary; and the Court having reviewed the Motion and the Montagner Declaration and having heard statements in support of the Motion at the hearing held on May \_\_\_\_, 2012 (the "Hearing"); and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and it appearing, and the Court having found, that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors and other parties in interest; and any objections to the relief requested in the Motion having been withdrawn or overruled on the merits; and after due deliberation and sufficient cause appearing therefor, it is hereby **ORDERED** that:

1. The Motion is granted on an interim basis, to the extent provided herein.
2. The Debtors are authorized to: (a) continue to use the Cash Management Systems and the Bank Accounts, with the same account numbers, in existence on the Petition Date, including, without limitation, those accounts identified on Schedule I attached hereto,

(b) treat the Bank Accounts for all purposes as accounts of the Debtors as debtors in possession, (c) if needed, open new debtor in possession accounts with authorized depository banks or close any existing accounts as the Debtors may deem necessary and appropriate in their sole discretion; provided, however, that the Debtors shall give notice to the Office of the United States Trustee for the Southern District of New York (the "U.S. Trustee"), any statutory committees appointed in these Chapter 11 Cases and counsel to the agents for the Debtors' prepetition secured lenders prior to opening or closing a Bank Account and (d) use, in their present form, all correspondence and business forms (including, without limitation, checks, business cards, letterhead, purchase orders and invoices) and other documents related to the Bank Accounts, without reference to their status as debtors in possession; provided, however, that the Debtors shall obtain a stamp that they will use to indicate their status as debtors in possession and will also immediately update their computer-generated checks to reflect same. The Debtors shall maintain accurate records of all transfers within the Cash Management System so that all postpetition transfers and transactions shall be adequately and promptly documented in, and readily ascertainable from, their books and records, to the same extent by the Debtors before the Petition Date.

3. Except as otherwise expressly provided in this Order, the Cash Management Banks are authorized and directed to continue to service and administer the Bank Accounts as accounts of the Debtors as debtors in possession, without interruption and in the ordinary course, and to receive, process, honor and pay any and all checks, drafts, wires, credit cards, purchase cards and automated clearing house transfers issued, payable through or drawn on the Bank Accounts after the Petition Date by the holders, makers or other parties entitled to issue instructions with respect thereto, as the case may be; provided, however, that any check,

advice, draft or other notification drawn or issued by the Debtors before the Petition Date may be honored by any bank only if specifically authorized by order of this Court.

4. The Cash Management Banks are authorized to debit the Debtors' accounts in the ordinary course of business without the need for further order of this Court on account of: (a) all checks drawn on the Debtors' accounts, which are cashed at such Cash Management Banks or exchanged for cashier's checks by the payees thereof prior to the Petition Date, (b) all checks or other items deposited in one of the Debtors' accounts with such Cash Management Bank prior to the Petition Date, which have been dishonored or returned unpaid for any reason, together with any fees and costs in connection therewith, to the same extent the Debtor was responsible for such items prior to the Petition Date, and (c) all undisputed prepetition amounts outstanding as of the date hereof, if any, owed to any Cash Management Bank as service charges for the maintenance of the Cash Management Systems.

5. Notwithstanding any other provision of this Order, no Cash Management Bank that honors a prepetition check or other item drawn on any account that is the subject of this Order (a) at the direction of the Debtors, (b) in a good faith belief that the Court has authorized such prepetition check or item to be honored or (c) as the result of an innocent mistake made despite implementation of reasonable item-handling procedures, shall be deemed to be liable to the Debtors or their estates or otherwise in violation of this Order.

6. The Cash Management Banks are authorized to charge, and the Debtors are authorized to pay, honor or allow the Bank Fees and charge back returned items to the Bank Accounts in the ordinary course.

7. The Debtors are authorized and empowered on an interim basis to continue to invest excess funds consistent with prior practice in the Inc. Group Investment Accounts and LP Group Investment Accounts.

8. The Debtors are authorized to continue performing their respective obligations, commitments and transactions constituting Intercompany Transactions in the ordinary course of the business. The Debtors shall maintain accurate records of all Intercompany Transactions such that all postpetition transfers and transactions shall be adequately and promptly documented in, and readily ascertainable from, their books and records.

9. The Debtors and their non-Debtor affiliates are expressly authorized to set off postpetition obligations arising on account of Intercompany Transactions between a Debtor and another Debtor or between a Debtor and a non-Debtor affiliate. The Debtors shall provide a monthly accounting of any such postpetition setoffs, including the obligor, obligee, amount and purposes for which any Intercompany Transaction was incurred, to (a) any official committee appointed in these cases and (b) counsel to the agents under the Debtors' prepetition credit agreements. No provision of this Order or any financing order shall impair or otherwise prejudice the ability of the Court to fashion a legal or equitable remedy in the event that such setoff of an Intercompany Transaction is successfully challenged by any party in interest.

10. Subject to the provisions of any order authorizing postpetition financing or the use of cash collateral in these Chapter 11 Cases, all Intercompany Claims arising after the Petition Date owed by an individual Debtor to another individual Debtor or a non-Debtor affiliate shall be accorded administrative expense priority in accordance with sections 503(b) and 507(a)(2) of the Bankruptcy Code.

11. The Cash Management Banks are authorized to pay obligations in accordance with this or any separate order of this Court.

12. Except as otherwise provided in this Order or in a separate order of this Court, the Cash Management Banks shall not honor or pay any payments drawn on the listed Bank Accounts or otherwise issued prior to the Petition Date.

13. As soon as practicable after entry of this Order, the Debtors shall serve a copy of this Order on the Cash Management Banks.

14. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion, and the requirements of Bankruptcy Rule 6004(a) are satisfied by such notice.

15. Notwithstanding the possible applicability of Bankruptcy Rules 6004(a) and 6004(h) or otherwise, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

16. The Final Hearing to consider entry of the Final Order is scheduled for \_\_\_\_\_, 2012 at \_\_\_\_\_.m. (prevailing Eastern time) before this Court. On or before \_\_\_\_\_, 2012, the Debtors shall serve, by United States mail, first-class postage prepaid, notice of the entry of this Interim Order and of the Final Hearing (the "Final Hearing Notice"), together with copies of this Interim Order and the Motion, on: (a) the parties having been given notice of the Interim Hearing, (b) any party which has filed prior to such date a request for notices with this Court and (c) counsel for the official committee of unsecured creditors (the "Committee"). The Final Hearing Notice shall state that any party in interest objecting to the entry of the proposed Final Order shall file written objections with the Clerk of Court no later than on \_\_\_\_\_, 2012 at 4:00 p.m. (prevailing Eastern time), which objections shall be

served so as to be received on or before such date by: (a) LightSquared Inc., 450 Park Avenue, Suite 2201, New York, NY 10022, Attn: Marc R. Montagner and Curtis Lu, Esq., (b) proposed counsel to the Debtors, Milbank, Tweed, Hadley & McCloy LLP, One Chase Manhattan Plaza, New York, NY 10005, Attn: Matthew S. Barr, Esq. and Karen Gartenberg, Esq., (c) the Office of the United States Trustee for the Southern District of New York, (d) counsel for the Committee, (e) counsel to U.S. Bank National Association, as administrative agent under the Prepetition Inc. Credit Agreement, Akin Gump Strauss Hauer & Feld LLP, One Bryant Park, New York, NY 10036, Attn: Michael S. Stamer, Esq. and Philip C. Dublin, Esq., (f) counsel to UBS AG, Stamford Branch, as administrative agent under the Prepetition LP Credit Agreement, Latham & Watkins LLP, 885 Third Avenue, New York, NY 10022, Attn: Melissa S. Alwang, Esq. and (g) counsel to the ad hoc secured group of Prepetition LP Lenders, White & Case LLP, 1155 Avenue of the Americas, New York, NY 10036, Attn: Thomas E. Lauria, Esq.

17. Bankruptcy Rule 6003(b) has been satisfied because the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors.

18. The Debtors are authorized and empowered to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

19. The requirements set forth in Local Rule 9013-1(a) are satisfied.

20. The Court retains jurisdiction with respect to all matters arising from or related to the implementation and interpretation of this Order.

New York, New York  
Date: \_\_\_\_\_, 2012

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UNITED STATES BANKRUPTCY JUDGE



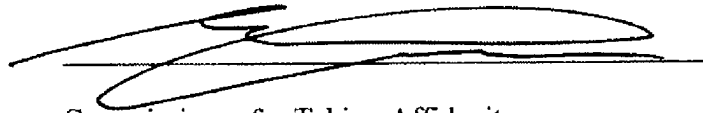
**Schedule 1**

**Bank Accounts**

Entity	Bank	Account Number	Type	Contact	Address
LightSquared Inc.	SunTrust Bank	XXXXXXXXXX2103	Operating/ Disbursement	Matt Pallo ph (703) 442-1617 fax (703) 442-1626	8330 Boone Blvd. Ste 700 Vienna, VA 22182
LightSquared Inc.	RBC	XXX X3416	Investment	Marina Galli ph (415) 445-8519 fax (415) 445-8452	345 California St. San Francisco, CA 94104
LightSquared Inc.	Bank of America	XXXXXXXXXX4676	Restricted CD	Vicky Gindes (301) 517-3185	1101 Wootton Pkwy 4th fl. Rockville, MA 20852
LightSquared LP	SunTrust Bank	XXXXXX3272	Operating/ Disbursement	Matt Pallo ph (703) 442-1617 fax (703) 442-1626	8330 Boone Blvd. Ste 700 Vienna, VA 22182
LightSquared LP	RBC	XXX X3498	Investment	Marina Galli ph 415 445-8519 fax 415 445-8452	345 California St. San Francisco, CA 94104
LightSquared LP	Morgan Stanley	XXXXXX0350	Investment	Matt O'Haren 415-955-1577	555 California St. 35th Fl San Francisco, CA 94104
LightSquared LP	Comerica	XXXXXX9959	Restricted	Gina M. Gautier (703) 464-7237 (703) 467-9308	11921 Freedom Drive Suite 920 Reston, VA 20190
LightSquared LP	SunTrust Bank	X3051CAD	Inactive Foreign Exchange Deposit	Michael Pensky Ph 877-726-9733 Fax 404-926-5777	3333 Peachtree Rd NE, 11th Fl Atlanta, GA 30326
LightSquared LP	SunTrust Bank	X3051EUR	Inactive Foreign Exchange Deposit	Michael Pensky Ph 877-726-9733 Fax 404-926-5777	3333 Peachtree Rd NE, 11th Fl Atlanta, GA 30326
LightSquared LP	Wells Fargo	XX5576EUR	Foreign Exchange Deposit	675576EUR	301 S. College, Fl 07 Charlotte, NC 28202
LightSquared Corp.	ScotiaBank	XXXX XX9411	U.S. Dollar Disbursement	Borys Terebenec (416) 866-7704 or Lidia Dias (647) 288-1858 ext 81802	44 King Street West Toronto, ON Canada M5H 1H1
LightSquared Corp.	ScotiaBank	XXXXXX XXX15 18	Investment	Borys Terebenec (416) 866-7704 or Lidia Dias (647) 288-1858 ext 81802	44 King Street West Toronto, ON Canada M5H 1H1
LightSquared Corp.	SunTrust Bank	XXXXXXXXXX9842	Canadian Dollar Disbursement	Matt Pallo ph (703) 442-1617 fax (703) 442-1626	8330 Boone Blvd. Ste 700 Vienna, VA 22182

Entity	Bank	Account Number	Type	Contact	Address
One Dot Six Corp.	SunTrust Bank	XXXXXXXXXX3130	Operating/ Disbursement	Matt Pallo ph (703) 442-1617 fax (703) 442-1626	8330 Boone Blvd. Ste 700 Vienna, VA 22182
LightSquared Network LLC	SunTrust Bank	XXXXXXXXXX9354	Operating/ Disbursement	Matt Pallo ph (703) 442-1617 fax (703) 442-1626	8330 Boone Blvd. Ste 700 Vienna, VA 22182
TMI Communications Delaware, Limited Partnership	RBC	XXX X3506	Investment	Marina Galli ph 415 445-8519 fax 415 445-8452	345 California St. San Francisco, CA 94104

Exhibit "I" to the Affidavit of Elizabeth Creary,  
sworn before me this 3<sup>rd</sup> day of June, 2012.

A handwritten signature in black ink, consisting of a series of loops and strokes, positioned above a horizontal line.

Commissioner for Taking Affidavits

**Michael Colin Anderson,  
a Commissioner, etc., Province of  
Ontario, while a Student-at-Law.  
Expires May 8, 2015**

Paul S. Aronzon (*pro hac vice* pending)  
Matthew S. Barr  
Steven Z. Szanzer  
Karen Gartenberg  
MILBANK, TWEED, HADLEY & McCLOY LLP  
One Chase Manhattan Plaza  
New York, NY 10005-1413  
(212) 530-5000

*Proposed Counsel to Debtors and Debtors in Possession*

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

---

In re:	)	
	)	Chapter 11
	)	
LIGHTSQUARED INC., <i>et al.</i> ,	)	Case No. 12- _____ ( )
	)	
Debtors. <sup>1</sup>	)	Joint Administration Requested
	)	

---

**DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL  
ORDERS (A) AUTHORIZING, BUT NOT DIRECTING, DEBTORS TO  
(I) PAY CERTAIN PREPETITION WAGES AND REIMBURSABLE  
EMPLOYEE EXPENSES, (II) PAY AND HONOR EMPLOYEE BENEFITS AND  
(III) CONTINUE EMPLOYEE BENEFITS PROGRAMS AND  
(B) AUTHORIZING AND DIRECTING FINANCIAL INSTITUTIONS TO  
HONOR ALL RELATED CHECKS AND ELECTRONIC PAYMENT REQUESTS**

LightSquared Inc. and certain of its affiliates, as debtors and debtors in possession  
(collectively, "LightSquared" or the "Debtors") in the above-captioned chapter 11 cases (the  
"Chapter 11 Cases"), file this motion (the "Motion") for entry of an order (the "Interim Order")  
(a) authorizing the Debtors to (i) pay certain prepetition wages, salaries and other compensation,

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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 or foreign tax or registration identification number, are: LightSquared Inc. (8845), LightSquared Investors Holdings Inc. (0984), One Dot Four Corp. (8806), One Dot Six Corp. (8763), SkyTerra Rollup LLC (N/A), SkyTerra Rollup Sub LLC (N/A), SkyTerra Investors LLC (N/A), TMI Communications Delaware, Limited Partnership (4456), LightSquared GP Inc. (6190), LightSquared LP (3801), ATC Technologies, LLC (3432), LightSquared Corp. (1361), LightSquared Finance Co. (6962), LightSquared Network LLC (1750), LightSquared Inc. of Virginia (9725), LightSquared Subsidiary LLC (9821), Lightsquared Bermuda Ltd. (7247), SkyTerra Holdings (Canada) Inc. (0631), SkyTerra (Canada) Inc. (0629) and One Dot Six TVCC Corp. (0040). The location of the debtors' corporate headquarters is 450 Park Avenue, Suite 2201, New York, NY 10022.



such as the rank and file bonus program, taxes, withholdings and reimbursable expenses, (ii) pay and honor obligations relating to employee benefits programs and (iii) continue their employee benefits programs on a postpetition basis, and (b) authorizing and directing financial institutions to receive, process, honor and pay all checks issued and electronic requests made relating to the foregoing and (c) scheduling a final hearing (the “Final Hearing”) to consider entry of a final order (the “Final Order”) granting the relief provided in the Interim Order on a permanent basis and the additional relief described in this Motion. In support of this Motion, the Debtors submit the Declaration of Marc R. Montagner, Chief Financial Officer and Interim Co-Chief Operating Officer of LightSquared Inc., (A) in Support of First Day Pleadings and (B) Pursuant to Rule 1007-2 of Local Bankruptcy Rules for United States Bankruptcy Court for Southern District of New York (the “Montagner Declaration”). In further support of this Motion, the Debtors respectfully state as follows:

### **Jurisdiction**

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).
2. Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The statutory bases for the relief requested herein are sections 105(a), 363(b), 507(a)(4) and (a)(5), 1107(a), 1108 and 1129(a)(9)(B) of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as amended, the “Bankruptcy Code”) and Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

### **Background**

#### **A. Introduction**

4. On May 14, 2012 (the “Petition Date”), each of the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

5. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Debtors have requested the joint administration of these Chapter 11 Cases for procedural purposes. No trustee, examiner or statutory committee of unsecured creditors has been appointed in these Chapter 11 Cases.

**B. Overview of Debtors' Businesses**

*(i) Debtors' Satellite Business*

6. LightSquared, a mobile communications company with headquarters in New York and incorporated in Delaware in 1985, is the first private company to offer mobile satellite services throughout North America, initially using two geostationary satellites<sup>2</sup> as well as a portion of the electromagnetic spectrum known as the L-Band. Since its first satellite became operational in 1996, LightSquared has provided satellite communications services – which include data, voice, fax and dispatch services – to companies and federal, state, provincial, local and foreign governments that are wholesale purchasers of bandwidth power and capacity, resellers of telephony, data and dispatch services and retail voice users. For example, LightSquared provides services to public safety officers, emergency responders and the United States Military. Today, LightSquared's mobile satellite business generates approximately \$40 million in annual revenue and provides service to approximately 300,000 end users.

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<sup>2</sup> These two first-generation satellites, known as MSAT-1 and MSAT-2, currently provide services to some existing customers, and have also, since March 10, 2012, provided emergency back-up service to all of LightSquared's customers due to a solar flare(s), which temporarily disabled the SkyTerra-1 satellite, one of LightSquared's two next-generation satellites. LightSquared is currently finalizing the assessment of the solar flare(s) prior to transitioning customers back to that satellite for service. LightSquared will also rely upon the MSAT system until such time that SkyTerra-2, LightSquared's second next-generation satellite, is launched. Both MSAT-1 and MSAT-2 are approaching the ends of their useful lives and are part of the Prepetition LP Collateral (as defined below). They have, in the past, experienced anomalies and Solid State Power Amplifier failures and neither currently operates at full capacity.

7. LightSquared launched SkyTerra-1 in November 2010, which, as mentioned above, is one of two next-generation satellites that have been constructed by LightSquared. LightSquared's next-generation satellites are two of the most powerful mobile satellites ever constructed. Each is equipped with a 22 meter (75 foot) diameter antenna which provides ten (10) times better performance than that provided by LightSquared's prior satellites. The satellites have the capability of forming up to five hundred (500) beams over North America and can operate with devices that are as small as standard cell phones or USB modems. The SkyTerra-1 and SkyTerra-2 satellite networks utilize state-of-the art ground-based beam forming systems. Such systems allow flexibility in beam shapes, number, bandwidth allocation and beam power allocation, which is unprecedented in prior mobile satellite systems. SkyTerra-1 is fully operational, and SkyTerra-2 is constructed and stored in preparation for launch.

8. LightSquared currently operates three (3) lines of business, including Mobile Satellite Communications ("MSAT"), Mobile Data Services ("MDS") and Private Network Carriers ("PNC") through a wholesale business model whereby its partners bill the end users, and LightSquared bills its partners at a wholesale rate. Through these three lines of business, LightSquared has over fifteen wholesale partners, including, but not limited to, Comtech Mobile Datacom Corporation, XATA Corporation, SkyBitz, Outerlink, Omnistar, Wireless Matrix, EMS Technologies/Honeywell, Network Innovations, Glentel, Astrum, Infosat, Inmosat and International Satellite Service, that collectively support approximately 300,000 subscribers across several markets throughout North America.

9. MSAT Business. LightSquared's MSAT business provides circuit-switched voice, low data rate services and push-to-talk ("PTT") services, which are sold through LightSquared's authorized wholesale service providers and are utilized by a variety of

governmental agencies at the federal, state and local level, as well as by various markets in the enterprise space. LightSquared is currently the only commercial satellite operator in North America offering PTT service. LightSquared's two-way, PTT radio service over satellite is a popular option for communications in remote areas or during emergency situations, and its dispatch or two-way radio style is familiar to the public safety community and ideal for command and control. Thus, in the public/government sector, LightSquared's MSAT business serves end users in public safety, emergency management and defense as well as health and education.

10. Specifically, LightSquared's PTT products and services were utilized by public safety and education (such as the University of North Carolina Wilmington) end users during, and in preparation for, several disasters, including Hurricane Katrina (Mississippi Department of Wildlife, Fisheries and Parks), Hurricane Gustav (several federal, state and local agencies), Hurricane Irene (DE State Police, MD Emergency Management Agency), Kentucky Ice Storms (Kentucky Department for Public Health) and, most recently, the tornadoes in Kentucky (Kentucky Department for Public Health). In all of these disasters, LightSquared's mobile satellite service, with its PTT capability, provided instant communications for public safety agencies and a means for interoperability among disparate agencies.

11. Moreover, in recent years, the United States has faced a variety of costly natural and man-made disasters, including hurricanes, tornadoes, wildfires, flooding and earthquakes, as well as the 9/11 terrorist attacks, which have amplified the need for dependable communications that enable organizations to communicate with each other. Often, the only means available to the public safety/emergency responder community to do so is through mobile satellite communications. To address these needs, federal, state and local agencies have voluntarily banded together with LightSquared in a public-private partnership to create the Satellite Mutual Aid Radio



Talkgroup (“SMART”) program – enabling nationwide and regional interoperability at no additional cost to LightSquared users. Since SMART is a feature provided at no cost to LightSquared’s public safety end users, the SMART program, incorporating such SMART feature, is a cost-efficient program that delivers measurable return on investment – swift and reliable communications interoperability for emergency response and contingency operations. With the rapid growth of SMART, public safety and emergency responders have a resource that enables communications interoperability that is immediate, reliable and always available.

12. It is thus no surprise that the nationwide and regional SMART end users include, among others, (a) JSMART, utilized by public safety agencies across the country and managed by the DOJ Wireless Management, (b) LSMART, utilized nationally by law enforcement and managed by the U.S. Marshals Service, (c) USMART, utilized by urban search and rescue teams across the United States and managed by the Montgomery County, Maryland Fire & Rescue Service, (d) NE SMART, utilized by the northeast states and managed by the Connecticut State Police, (e) WSMART, utilized by the western states and managed by the California Emergency Management Agency and (f) MWSMART, utilized by the midwest states and managed by the Indiana Department of Homeland Security.

13. The MSAT line of business also serves various markets in the enterprise space, including maritime, oil and gas, utilities, transportation, media and recreation. In the maritime vertical market, especially in Alaska, fishermen rely on LightSquared’s PTT capability while at sea in extreme environments, especially north of 60° toward the Aleutians. Additionally, enterprise users in the oil and gas industry rely on LightSquared’s mobile satellite service in the Gulf region to communicate with workboats and on oil rigs/platforms for instantaneous communication between rigs/boats and back to operations centers on the coast.

14. MDS Business. LightSquared's second line of business, MDS, is a low data rate service offering used primarily for applications such as fleet and load management, email, vehicle tracking, two-way messaging and broadcast messaging. Like LightSquared's MSAT services, MDS is sold through LightSquared's authorized wholesale service providers and is utilized by various end users. One such end user, the New Mexico State Police, utilizes MDS in police cruisers to enable officers to perform database lookups on ruggedized laptops in remote areas where no terrestrial communications exist and LightSquared's satellite service is the only means by which to meet this critical data communications requirement in an effective manner.

15. PNC Business. Finally, LightSquared's third line of business, PNC, enables customers to lease bandwidth from LightSquared over which they offer custom satellite data solutions (typically, asset tracking services for truck and rail) to a wide variety of end users. In connection therewith, LightSquared's PNC customers are responsible for developing a custom air interface, providing hub, end-user equipment and servicing end users. One of LightSquared's largest PNC customers, SkyBitz, provides asset tracking services through LightSquared's satellite capacity for Tri State Motor Transit Co., an end user that hauls high-risk cargo such as munitions, explosives and nuclear fuel bound for sites from coast to coast. LightSquared's satellite capacity ensures that trailers hauling this cargo are constantly tracked where terrestrial communications do not exist. Another PNC customer, Comtech Mobile Datacom Corp., provides service to the United States military, utilizing LightSquared's service in North America in connection with the Blue Force Tracking system that tracks all military assets.

(ii) *Debtors' Terrestrial Component of Satellite Business*

16. In the late 1990s, LightSquared determined that adding a terrestrial (*i.e.*, land-based) component to its satellite system would optimize the use of the L-Band and provide

a communications system with superior reliability and coverage. By combining a nationwide system of terrestrial base stations with one of the largest commercial satellites ever launched – the state-of-the-art SkyTerra-1 – LightSquared could offer coverage of a satellite system in North America and the capacity of a next-generation, high-speed wireless broadband network.

17. LightSquared determined that a significant market opportunity was created for a wholesale-only, 4th Generation Long Term Evolution (“4G LTE”) wireless broadband network due to, among other things, (a) the proliferation of new mobile devices, such as smartphones and tablets, which accelerated demand for ubiquitous, on-the-go data-rich Internet services, (b) limited wireless network capacity available to support increased data usage and (c) substantial costs and barriers to entry preventing smaller carriers and new operators from deploying nationwide 4G LTE networks. LightSquared believed that many wireless operators would face significant challenges meeting network demands due to spectrum availability and capital shortages because the wireless communications industry was (and currently remains) dominated by a small number of established, national wireless carriers and current levels of data transmission already utilized significant network capacity. This led LightSquared to conclude that some carriers would be unable to deploy their own 4G LTE networks in a timely and cost-effective manner, while others would be unable to install enough capacity to serve the needs of their existing customer bases, thereby resulting in such carriers being unable to offer comparable service quality and speeds on a cost-competitive basis with the largest national carriers. To address this imbalance, LightSquared’s strategy was, and currently remains, to enable a broad range of potential wholesale customers to launch competitive retail wireless service offerings using wholesale capacity on LightSquared’s 4G LTE network.

18. Accordingly, LightSquared initiated the process of building the only 4G LTE open wireless broadband network that incorporates both terrestrial (*i.e.*, land-based) and satellite coverage throughout North America and offers people the speed, value and reliability of universal connectivity, wherever they may be located. The satellite component of the system would provide service to the population in areas not otherwise covered by terrestrial systems. Through its wholesale-only business model, entities without their own wireless network, or that have limited geographic coverage or spectrum, will be able to market and sell their own devices, applications and services using the LightSquared network at a competitive price and without retail competition from LightSquared. This, in turn, will enable manufacturers and retailers to provide a solution for consumers, while creating new customer relationships and ongoing revenue streams for themselves. LightSquared's partners will also be able to develop their own devices, applications and services on the LightSquared network because it is a completely open network system.

19. As of the Petition Date, the Debtors employed approximately 168 people in the United States and Canada. As of February 29, 2012, the Debtors had approximately \$4.48 billion in assets (book value) and \$2.29 billion in liabilities.

**C. Additional Information**

20. Additional information regarding the Debtors' businesses, assets, capital structure and the circumstances leading to the filing of these Chapter 11 Cases is set forth in the Montagner Declaration, which was filed contemporaneously herewith.

**Employee Obligations**

**A. Overview of Debtors' Workforce and Employee Obligations**

21. The Debtors currently employ approximately one hundred sixty-eight (168) employees, thirty-one (31) of which are employed by the Debtors on an hourly basis

(the “Hourly Employees”) and the remainder of which are employed by the Debtors on a full-time, salaried basis (the “Full-Time Employees” and, together with the Hourly Employees, the “Employees”). In addition to their Employees, the Debtors supplement their workforce with consultants and independent contractors depending on the Debtors’ business needs. The Debtors regularly utilize the services of approximately seven (7) consultants or independent contractors (the “Contractors”).

22. The Employees and Contractors perform a variety of critical functions, including: accounting, administrative support, accounts payable, billing operations, compliance (legal and regulatory), corporate development, core network engineering, customer care, external affairs, financial planning and analysis, government sales/contracting, human resources, information technology, legal, marketing, network operations and maintenance, payroll, procurement, sales and treasury. The Employees’ and Contractors’ skills and their knowledge and understanding of the Debtors’ operations and infrastructure are essential to the effective operation, and reorganization, of the Debtors’ businesses.<sup>3</sup>

23. Just as the Debtors depend on the Employees and Contractors for their day-to-day operations, the Employees and Contractors depend on the Debtors. Indeed, the vast majority of the Employees and Contractors rely exclusively on payments received from the Debtors for their compensation, benefits and expense reimbursements (as applicable) to continue to pay their daily living expenses. Among other things, the Debtors pay and incur a number of obligations related to their Employees and Contractors (as applicable), such as (a) wages and salaries, overtime compensation, bonuses and incentive programs and other compensation,

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<sup>3</sup> The Debtors recently conducted a workforce reduction program eliminating approximately half of its workforce to scale down operations and resources to those needed given the Debtors’ current circumstances. Specifically, the Company terminated approximately 145 employees on or about March 2, 2012.

(b) federal, state and provincial withholding and income taxes and other withheld amounts (including, without limitation, wage garnishments, pre-tax and after-tax deductions, Employees' share of Canadian Employment Insurance premiums and Canada Pension Plan contributions, taxes and 401(k) contributions), (c) reimbursement of business expenses, (d) medical, vision and dental benefits, (e) short- and long-term disability coverage, (f) accidental death and dismemberment and life insurance, (g) supplemental insurance benefits, (h) workers' compensation benefits, (i) vacation time, paid time off and leaves of absence, (j) retirement benefits and other employee savings plans, pensions and severance benefits, (k) employee assistance and tuition assistance programs, various reimbursable expenses and flexible spending and (l) other benefits that the Debtors have historically provided in the ordinary course of business (collectively, and as more fully described herein, the "Employee Obligations").<sup>4</sup>

24. As of the Petition Date, the Debtors believe that the majority of all prepetition amounts owed on account of the Employee Obligations have been satisfied. Certain amounts may remain outstanding due to a number of factors, including (a) discrepancies that exist between amounts paid prepetition and the amounts that should have been paid, (b) the possibility that some prepetition checks or other payments may not have cleared before the Petition Date, (c) the fact that certain accrued obligations may not yet have become due and payable as of the Petition Date and (d) the possibility that certain prepetition amounts related to the Employees may have accrued but remain outstanding because they are pending approval or have not yet been submitted.

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<sup>4</sup> The summary of the Debtors' various Employee Obligations provided herein is qualified entirely by the Debtors' official policies or other practices, programs or agreements, whether written or unwritten, evidencing an arrangement among the Debtors and their Employees (each, an "Official Policy"). In the event of any inconsistency or ambiguity between this summary and an Official Policy, the terms of such Official Policy shall govern.

25. In an effort to minimize the personal hardship to the Employees and Contractors and to maintain morale and stability in the Debtors' business operations during this critical juncture, the Debtors respectfully request authority to continue to pay and honor, in their discretion (except where payments are required by applicable law), amounts arising under or in connection with the Debtors' Employee Obligations.

**B. Employee Wage Obligations**

*(i) Employee Payroll Obligations*

26. The Debtors pay the majority of their Employees on a weekly basis. The Debtors' payroll obligations generally include base wages and salaries, overtime compensation and bonuses, as applicable (collectively, the "Employee Payroll Obligations").<sup>5</sup> On average, the Debtors' gross payroll totals approximately US\$415,600 and CDN\$88,600 every week.<sup>6</sup>

27. Additionally, the Debtors regularly pay their Contractors, whose payments accrue on either an hourly or fixed monthly basis. On an annualized basis, in the aggregate, the Contractors receive amounts equivalent to approximately \$842,000 per year, or approximately \$16,192 every week, paid by way of vendors through accounts payable (collectively, the "Contractor Obligations" and, together with the Employee Payroll Obligations, the "Payroll Obligations").

28. The Debtors' payroll for the current applicable payroll period was paid by check or direct deposit, as applicable, to each Employee or Contractor on May 11, 2012, for the period through and including May 13, 2012.<sup>7</sup> However, the Debtors estimate that \$5,500 in non-

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<sup>5</sup> The Debtors do not provide similar compensation to members of their Board of Directors and request no relief with respect to director compensation in this Motion.

<sup>6</sup> All amounts contained herein are in U.S. dollars unless otherwise indicated. The amounts listed herein in respect of the Debtors' gross payroll exclude payroll taxes, as payroll taxes are described below.

<sup>7</sup> Specifically, and as discussed below, certain of the Debtors use Automatic Data Processing, Inc. ("ADP"), a third-party service provider to administer payroll funds made available to Employees through direct

officer Employee Payroll Obligations (the “Unpaid Hourly Compensation”), which accrue in arrears for certain of the Debtors’ hourly employees, remain unpaid as of the Petition Date. The Debtors respectfully request authority to pay the Unpaid Hourly Compensation. In addition, out of an abundance of caution, and to the extent that such amounts have, for whatever reason, not been made available to Employees prior to the Petition Date, the Debtors respectfully request that they be able to pay any outstanding Payroll Obligations.

29. In connection with their Payroll Obligations, certain of the Debtors outsource their payroll to ADP. ADP administers payroll funds made available to Employees and Contractors through direct deposit and is responsible for paying certain of the Debtors’ withholding and payroll taxes to applicable third parties. The Debtors incur approximately \$85,000 per year in fees in connection with ADP’s services (the “Service Fees”). As of the Petition Date, the Debtors estimate that approximately \$1,800 has accrued but remains unpaid on account of the Service Fees during the prepetition period (the “Unpaid Service Fees”).

(ii) *Employee Incentive Programs*

30. In addition to paying salaries and hourly wages, the Debtors offer discretionary bonus programs (collectively, the “Non-Insider Incentive Program”) to their non-officer Employees (the “Non-Insider Employees”) to incentivize and encourage such Employees to perform at a high level and, thereby, maximize the value of the Debtors’ businesses. The Debtors have historically maintained similar incentive programs for their Non-Insider Employees. The Non-Insider Incentive Program is a customary and important component of the Debtors’ compensation structure for the Non-Insider Employees and is designed to encourage

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deposit. Accordingly, a portion of the prepetition Employee payroll funds for the current pay period has been withdrawn from the Debtors’ accounts, but may not be made available to the Employees before the Petition Date. In some instances, however, even where the Employees have received payroll funds through direct deposit, the funds may not have been withdrawn from the Debtors’ accounts before the Petition Date.



Employees to achieve performance goals and enhance the success of the Debtors' operations. Under the Non-Insider Incentive Program, Non-Insider Employees who were employed prior to October 1 of the bonus year are eligible to receive a discretionary annual performance bonus payable in February for the prior year's earned bonus.<sup>8</sup> Specifically, all Non-Insider Employees have a target bonus that is expressed as a percentage of their base salary. Depending upon performance, each Non-Insider Employee may achieve on target or above or below target bonus, which is determined by assessing such Non-Insider Employees' performance against both corporate objectives and personal performance.

31. Additionally, the Non-Insider Employees are eligible to receive a bonus for referring candidates for employment who become employed by the Debtors for at least three (3) months. The annual cost typically associated with referral awards is approximately \$32,000. Finally, all of the Non-Insider Employees are eligible to receive a discretionary award upon a determination of the Patent Committee that the Non-Insider Employees have submitted a full and complete invention disclosure or upon the resulting grant of a patent. The annual cost associated with patent-related awards varies from year to year and is typically approximately \$8,000.

32. The Debtors seek authority to pay all Non-Insider Employees current on prepetition claims based upon any discretionary annual performance bonuses. As discussed further herein, the Debtors believe that a substantial portion of Non-Insider Employees' individual claims fall under the statutory cap that most Employees are allowed in any event. Therefore, the Debtors submit that payment of the discretionary bonus to all Non-Insider Employees under the Non-Insider Incentive Program, will, without significant additional cost, maintain morale at an important time in the Debtors' history. The maximum potential annual

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<sup>8</sup> With respect to any payments made in 2012 or thereafter pursuant to the Non-Insider Incentive Program, the discretionary annual performance bonus for certain Non-Insider Employees may be payable in advance semi-annually.

cost associated with the annual performance bonus under the Non-Insider Incentive Plan is approximately \$5.23 million,<sup>9</sup> which amount may become payable in or prior to February 2013. As of the Petition Date, there are no amounts owing under the Non-Insider Incentive Program. The Debtors do not seek authority to pay any related amounts during the Interim Period (as defined below).<sup>10</sup>

33. The Debtors similarly offer a discretionary bonus program (the “Senior Management Incentive Program” and, together with the Non-Insider Incentive Program, the “Employee Incentive Program”) to their senior management Employees (the “Senior Management Employees”). The Debtors have historically maintained this or similar programs for their Senior Management Employees. The Senior Management Incentive Program is a customary and important component of the Debtors’ compensation structure and is designed to encourage Senior Management Employees to achieve performance goals, which would facilitate the Debtors’ meeting its most critical corporate objectives.<sup>11</sup>

*(iii) Gross Pay Deductions, Governmental Withholdings and Payroll Taxes*

34. The Debtors routinely deduct certain amounts from their Employees’ gross pay, including, without limitation, (a) garnishments, child support and similar deductions and (b) other pre-tax and after-tax deductions payable pursuant to the Employee benefit plans discussed herein (*e.g.*, contributions relating to health care benefits, insurance premiums and flexible spending programs) (collectively, the “Deductions”). On a monthly basis, the Debtors

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<sup>9</sup> Specifically, the annual costs associated with the annual performance bonus with respect to Non-Insider Employees are approximately US\$4.73 million and CDN\$500,000.

<sup>10</sup> As of the Petition Date, all annual bonus amounts earned in 2011 (payable in February 2012) have been paid to the Employees.

<sup>11</sup> Notwithstanding anything contained herein, this Motion does not request payment of a performance bonus under the Senior Management Incentive Program to the Senior Management Employees. The Debtors respectfully reserve their rights to request such relief or any similar relief at a later date should they deem it necessary.

deduct and remit to appropriate third-party recipients approximately \$39,000 from the Employees' paychecks for the Deductions. The Debtors believe that, as of the Petition Date, all Deductions have been paid. However, out of an abundance of caution, the Debtors request authority to remit any unpaid prepetition Deductions (collectively, the "Unremitted Deductions") that may exist.

35. In addition to the Deductions, the Debtors are required by law to withhold amounts related to federal, state, provincial and local income taxes, as well as Social Security and Medicare taxes, and the Employees' share of Canadian Employment Insurance premiums and Canada Pension Plan contributions for remittance to the appropriate taxing authority; further, the Debtors withhold additional amounts relating to gym memberships upon the voluntary elections of Employees (collectively, the "Withheld Amounts"). The Debtors are also required to pay additional amounts for federal and state unemployment insurance, as well as the Debtors' share of Canadian Employment Insurance premiums, Canada Pension Plan contributions and Employer Health Tax contributions (together with the Withheld Amounts, the "Payroll Taxes"). On a monthly basis, the Debtors remit approximately US\$560,000 and CDN\$130,000 in Payroll Taxes, which amounts include employer taxes plus what is withheld and remitted on behalf of the employee. As of the Petition Date, the Debtors are not aware of any outstanding Payroll Taxes (collectively, the "Unremitted Payroll Taxes") except those that may arise in connection with any Unpaid Hourly Compensation. To the extent Unremitted Payroll Taxes exist in connection with the Unpaid Hourly Compensation, the Debtors estimate that such amounts should be less than \$500. To the extent that those or any additional Unremitted Payroll Taxes exist, the Debtors request authority to remit such amounts.

**C. Reimbursable Expenses**

36. In the ordinary course of business, the Debtors reimburse their Employees and Contractors for certain allowed expenses incurred on behalf of the Debtors while traveling on business or that are related to business development (collectively, the “Reimbursable Expenses”). More specifically, Reimbursable Expenses include, among other things, business travel (*e.g.*, airfare/rail, rental car, gas for rental car, taxis, parking/toll fare, mileage, hotel and telephone/internet), meals (*e.g.*, client entertainment, business travel-related and onsite), company cellular phones, company credit cards, a corporate credit card account through which employee business travel may be booked (the “AirPlus Service”), relocation, postage and delivery, printing expenses, office and computer supplies, publications, subscriptions and other miscellaneous expenses, subject to manager approval. Reimbursable Expenses must be (a) reasonable in amount and (b) necessary to the performance of the business involved.

37. Reimbursable Expenses are paid directly by Employees and Contractors, who then seek reimbursement from the Debtors. Specifically, the Debtors estimate that they reimburse Employees and Contractors for approximately \$45,000 to \$85,000 in Reimbursable Expenses each month plus the monthly cost of the AirPlus Service, which is approximately \$50,000, with certain increases in these amounts for particular months based on heightened business activity. As a part of the Debtors’ cost-cutting measures, the Debtors have implemented certain controls on expenditures related to Reimbursable Expenses. Notably, significant expenses relating to the AirPlus Service require management-level preapproval, as do other significant Reimbursable Expenses charges. The Debtors believe that certain accrued Reimbursable Expenses remain unpaid as of the Petition Date, and this amount is difficult to estimate due to the fact that expenses may be submitted by Employees after the Petition Date for amounts incurred before the commencement of these Chapter 11 Cases (the “Unpaid

Reimbursable Expenses”). The Unpaid Reimbursable Expenses may include up to approximately \$25,000 for expenses such as, among other things, those related to travel to the hearing regarding the First Day Pleadings. Out of an abundance of caution, the Debtors request authority to pay the Unpaid Reimbursable Expenses should any such amount be outstanding as of the Petition Date.

**D. Employee Benefits**

38. The Employee Obligations include obligations based on comprehensive benefits that the Debtors provide to all of their Full-Time Employees and certain of their dependents and beneficiaries, including medical, dental and vision benefits, short- and long-term disability, life insurance, retirement plans and other miscellaneous company benefits (collectively, and as more fully described below, the “Employee Benefits”).

*(i) Medical, Dental and Vision Plans*

39. The Debtors provide health care coverage, including prescription drug coverage, dental care and vision care to approximately two hundred thirty-six (236) current and former Employees in the United States,<sup>12</sup> fifty (50) current and former Employees in Canada, and their dependents (including coverage under COBRA (as defined below) for approximately one hundred thirty-one (131) individuals and families<sup>13</sup>) under various self-funded benefit plans, as follows (collectively, the “Medical, Dental and Vision Plans”):

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<sup>12</sup> Certain of the Debtors’ recently retired Employees qualify to retain certain benefits for a brief period.

<sup>13</sup> Pursuant to the requirements of the Consolidated Omnibus Budget Reconciliation Act of 1986 (“COBRA”), the Debtors provide for temporary continuation of health care benefits at group rates to former Employees. In connection with the Debtors’ February 2012 workforce restructuring, approximately one hundred twenty-five (125) former Employees and their families were offered coverage under COBRA and have until June 30, 2012 to elect to receive such coverage. The Debtors have offered to take on the responsibility to pay (the “COBRA Payments”) the full amount of the COBRA coverage and premiums for the months of May, June and July. The Debtors estimate that they may owe as much as \$160,000 per month for the months of June and July 2012 if all eligible former Employees elect to receive COBRA coverage; the Debtors have prepaid such amounts for the month of May 2012. The Debtors believe, however, that total amounts due and payable may be approximately \$80,000 per month (net). The Debtors

- Medical Plans. Employees are able to enroll in the Open Choice (PPO) or Open Access (HMO) medical plans, administered by Aetna Life Insurance Company (“Aetna”), which cover, among other things, prescription drugs and doctor visits. Employees contribute to the cost of their medical plans with pre-tax deductions from their paychecks. The Debtors pay approximately eighty-five percent (85%) of the medical plan premiums for U.S. Employees and one hundred percent (100%) for Canadian Employees.
- Dental Plans. Employees are able to enroll in the MetLife Dental PPO Plan, administered by MetLife, Inc. The plan covers, among other things, preventive services, as well as dependent and adult orthodontia with a \$1,000 lifetime maximum limit. The Debtors do not pay for dental plan premiums for their Employees.
- Vision Plans. Employees are able to enroll in a plan covered by Vision Service Plan. The plan offers coverage for one routine eye exam per year, plus discounts on eyewear, including contact lenses. Employees contribute to the cost of their vision plans with pre-tax deductions from their paychecks. The Debtors pay approximately one hundred percent (100%) of vision plan premiums for U.S. Employees and one hundred percent (100%) for Canadian Employees, as the vision plan is included as part of enrollment in the medical plan.

40. The Debtors estimate that they pay a total of approximately \$300,000 in monthly premiums and administrative costs associated with the Medical, Dental and Vision Plans described above.<sup>14</sup> As of the Petition Date, the Debtors estimate that no amounts are owed on account of the Medical, Dental and Vision Plans (the “Unpaid Medical, Dental and Vision Expenses”). To the extent any such amounts are owed, the Debtors believe that much, if not all, of the remaining Unpaid Medical, Dental and Vision Expenses would qualify for priority of payment pursuant to section 507(a)(5) of the Bankruptcy Code.

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request that former Employees retain the right to coverage under the Debtors’ Medical, Dental and Vision Plans in accordance with and subject to the requirements of the terms of COBRA, and further request authorization to pay any such COBRA Payments.

<sup>14</sup>

This amount is inclusive of the estimated amounts of the COBRA Payments.

(ii) *Insurance and Disability Benefits*

41. The Debtors provide approximately one hundred twenty-three (123) U.S. Employees and forty-five (45) Canadian Employees with life insurance, accidental death and dismemberment and short-term and long-term disability coverage (collectively, the “Insurance and Disability Benefits”). The Insurance and Disability Benefits are provided through UNUM Group and, in Canada, RBC Insurance and Manulife Financial. The Debtors pay one hundred percent (100%) of premiums for this coverage. The combined monthly premium for the Debtors’ Insurance and Disability Benefits is approximately \$23,000. As of the Petition Date, the Debtors estimate they owe no amounts on account of accrued but unpaid prepetition premiums for the Insurance and Disability Benefits (the “Unpaid Insurance and Disability Benefits”).

42. The Debtors also provide voluntary insurance coverage to certain eligible Employees (the “Supplemental Insurance Benefits”), the premiums for which are satisfied solely by participating Employees. The Debtors withhold from participating Employees’ paychecks amounts sufficient to pay these premiums, but the Debtors pay certain costs related to the Supplemental Insurance Benefits themselves. The Debtors estimate that approximately sixty (60) Employees receive the Supplemental Insurance Benefits, and the Debtors remit a total of approximately \$6,269 per month in premiums for the Supplemental Insurance Benefits. As of the Petition Date, the Debtors estimate they owe no amounts on account of accrued but unpaid prepetition premiums due under the Supplemental Insurance Benefits (the “Unremitted Supplemental Insurance Benefits”).

43. The Debtors believe that amounts withheld from Employee paychecks on account of the Unpaid Insurance and Disability Benefits and Supplemental Insurance Benefits premiums are likely held in trust by the Debtors and are not property of the Debtors’ estates.

Nevertheless, out of an abundance of caution and as discussed below, the Debtors respectfully request Court authorization to pay the Unpaid Insurance and Disability Benefits and Unremitted Supplemental Insurance Benefits, including costs associated with the Unpaid Insurance and Disability Benefits and Supplemental Insurance Benefits that are borne by the Debtors in the ordinary course of business.

*(iii) Workers' Compensation*

44. The Debtors provide workers' compensation insurance for their Employees (the "Workers' Compensation Program") at the statutorily-required level through The Travelers Indemnity Company ("Travelers"). The annual premium for the Workers' Compensation Program for the year beginning February 23, 2012 is approximately \$20,273, which amount was prepaid. Claims under the Workers' Compensation Program are handled by a third-party administrator and are paid as they are incurred. The Debtors have paid claims monthly, in arrears, at a cost of approximately \$1,500 per month (the "Unpaid Workers' Compensation Premium"). Additionally, the Canadian Debtors are registered with the Ontario Workplace Safety and Insurance Board (the "WSIB") and, in connection therewith, have paid claims commensurate with those that have accrued under the Workers' Compensation Program. Specifically, the Debtors have historically paid approximately \$1,650 per month (the "WSIB Costs") and, together with the Unpaid Workers' Compensation Premium, the "Unpaid Workers' Benefit"). The Debtors believe that no such benefits were incurred prepetition that have yet to be fully paid. Out of an abundance of caution, however, the Debtors request authority to pay the Unpaid Workers' Benefit should any such amount be outstanding as of the Petition Date.

*(iv) Paid Time-Off and Leaves of Absence*

45. The Debtors offer regular Full-Time Employees holiday pay for pre-determined holidays (e.g., New Year's Day) and personal days (collectively, "Paid Time Off") or



“PTO”). Eligible Employees may be entitled to cash payment for accrued Paid Time Off only upon termination. Employees may accrue a maximum of two hundred forty (240) hours and may carry hours over from the prior year, though Canadian Employees must use carried-over hours by October 31 of the current year. The Debtors anticipate that certain Employees will seek to use PTO accrued during the prepetition period after the Petition Date (the “Unused Paid Time Off”). PTO is the Debtors’ system of managing paid leave that can be used for scheduled and unscheduled absences from work. These absences include personal illness, family illness, personal days, floating holidays and vacation time.

46. Effective January 1st of each year, regular Full-Time Employees of the Debtors are eligible for paid time away from work under the following PTO guidelines<sup>15</sup> based on the employee’s length of service: (a) U.S. Employees may accrue twenty (20) days in the first five (5) years (at 6.15 hours per pay period) and twenty-five (25) days thereafter (at 7.69 hours per pay period), and (b) Canadian Employees may accrue up to fifteen (15) days of vacation time for less than eight (8) years of service (at 4.61 hours per pay period), twenty (20) days for eight (8) to fourteen (14) years of service (at 6.15 hours per pay period), twenty-five (25) days for fifteen (15) to twenty-four (24) years of service (at 7.69 hours per pay period) and thirty (30) days for twenty-five (25) or more years of service (at 9.23 hours per pay period).

47. The Debtors also provide Employees with certain other leaves of absence as required by law (collectively, the “Leaves of Absence”). Leaves of Absence include parental and child care leave, jury duty, voting leave, personal leave, compassionate care leave and bereavement leave. The Debtors do not accrue Leaves of Absence for their Employees, and Leaves of Absence are not reflected as a liability on the Debtors’ balance sheet. The Debtors are

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<sup>15</sup> Canadian Employees earn vacation time in lieu of PTO.

respectfully requesting, through this Motion, to honor Unused Paid Time Off and Leaves of Absences that accrued prior to the Petition Date, in accordance with their historical practices and in the ordinary course of business.

(v) *Employee Savings Plans*

48. The Debtors maintain for the benefit of eligible U.S. Employees an Employee savings plan, administered through The Principal Financial Group (“Principal Financial”), which is a tax-qualified plan within the meaning of, and administered in accordance with, the requirements of section 401(k) and other applicable sections of the Internal Revenue Code (the “401(k) Plan”). There are approximately one hundred eighteen (118) participants in the 401(k) Plan, with the Debtors withholding certain amounts from Employees’ paychecks and contributing such amounts to the 401(k) Plan (the “Employee 401(k) Contributions”). Specifically, the Debtors estimate that they withhold a total of approximately \$110,000 in Employee 401(k) Contributions each month. The 401(k) Plan also includes an employer matching component, pursuant to which the Debtors match Employee 401(k) Contributions dollar-for-dollar up to four percent (4%) of each Employee’s base salary per pay period (the “Employer 401(k) Contributions”). The Debtors estimate that they pay a total of approximately \$750,000 annually, or \$62,500 per month, on account of Employer 401(k) Contributions.<sup>16</sup>

49. Certain of the Employer 401(k) Contributions are paid to participating Employees commensurate with the Debtors’ Payroll Obligations. As such, prepetition Employer 401(k) Contributions for the most recent applicable payroll period were paid by check or direct deposit, as applicable, to each Employee or Contractor, on May 11, 2012. Certain amounts, however, may come due in connection with the Unpaid Hourly Compensation. The Debtors

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<sup>16</sup> Additionally, the Debtors estimate that they pay approximately \$35,889 each month in administrative costs associated with the 401(k) Plan. As of the Petition Date, the Debtors estimate that no such costs have accrued but remain unpaid.

estimate that such amounts should be less than \$500. To the extent any such outstanding Employer 401(k) Contributions exist, the Debtors respectfully request authority to remit such amounts.

(vi) *Pension*

50. The Debtors provide the SunLife Plan, a registered pension plan (the "Pension Plan"), for the benefit of eligible Canadian Employees. Approximately fifty (50) current and former Employees are covered by the Pension Plan. Each plan year, each participating Employee is required to contribute five percent (5%) of earnings up to the Year's Maximum Pensionable Earnings (the "YMPE") and six and a half percent (6.5%) over the YMPE; the Debtors contribute the same amounts. The Pension Plan, held by SunLife, is financed by a pension fund, LightSquared Corp. Registered Pension Plan, which consists of all participating Employees' accounts and any other deposits. The Debtors withhold certain amounts from participating Employees' paychecks and contribute such amounts to the Pension Plan (the "Employee Pension Contributions"). Specifically, the Debtors estimate that they withhold a total of approximately \$4,750 in Employee Pension Contributions each pay period, and the Debtors contribute the same amounts on behalf of participating Employees (the "Employer Pension Contributions"). The Debtors estimate that they pay a total of approximately \$247,000 annually, or \$20,583 per month, on account of Employer Pension Contributions.<sup>17</sup>

51. As of the Petition Date, the Debtors believe there are no unpaid obligations on account of the Employer Pension Contributions.

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<sup>17</sup> Additionally, the Debtors estimate that they pay no monthly administrative costs associated with the Pension Plan, as it is paid in sync with payroll. As of the Petition Date, the Debtors estimate that no such costs have accrued but remain unpaid.

(vii) *Severance*

52. The Debtors maintain policies under which they provide severance benefits (collectively, the “Severance Programs”) for Employees on a going forward basis, whether by way of the Debtors’ informal severance policy, individual employment agreements, or offer letters for Non-Insider Employees. The Severance Programs generally provide for payments based upon Employees’ years of service and level of compensation, with payments ranging from two to fifty-two weeks of compensation. Compensation of fifty-two weeks may be paid over a fifty-two week period; generally, this arrangement reflects certain obligations accepted by officer Employees, who are required to execute non-compete and non-disclosure agreements lasting generally for a period of one year following termination.

53. The Debtors estimate that fourteen (14) Employees became eligible for the Severance Programs in 2011, giving rise to a total annual benefit amount, in the aggregate, of approximately \$815,000. As discussed herein, in February 2012, the Debtors implemented a workforce reduction program, in compliance with the Worker Adjustment and Retraining Notification (WARN) Act, giving rise to a benefit amount, in the aggregate, of approximately \$13 million. The Debtors estimate that no amounts remain unpaid as of the Petition Date, given that the Severance Programs were prepaid through February 2013.<sup>18</sup> The Debtors seek authority to maintain the Severance Programs after the Petition Date for any and all qualified Employees. The Debtors do not seek authority to make any payments in respect of the Severance Programs during the Interim Period.

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<sup>18</sup> The Debtors estimate that they may have a contractual obligation to extend the benefit of one (1) Employee, which may then be due and payable in regular increments over the six-month period following May 11, 2012.

*(viii) Employee Assistance Program*

54. The Debtors provide eligible Full-Time Employees with access to an employee assistance program (the “Employee Assistance Program”), which includes services such as counseling and legal and financial assistance. The Employee Assistance Program is provided at no cost to the Employees through Ceridian Corporation. The Debtors expect to maintain the Employee Assistance Program after the Petition Date and request authorization to permit qualifying Employees who participated in this program before the Petition Date to continue participating in the Employee Assistance Program on a postpetition basis.

*(ix) Tuition Assistance Program*

55. The Debtors provide eligible Employees with access to a tuition assistance program (the “Tuition Assistance Program”). The Tuition Assistance Program provides a maximum annual benefit of \$5,000 to cover tuition only at an accredited higher education institution. Employees are provided this service at no cost. The Debtors expect to maintain the Tuition Assistance Program after the Petition Date and request authorization to permit qualifying Employees who participated in this program before the Petition Date to continue participating in the Tuition Assistance Program on a postpetition basis. As of the Petition Date, fifteen (15) Employees receive a benefit under the Tuition Assistance Program; however, the Debtors are not seeking to pay any related amounts during the Interim Period.

*(x) Flexible Spending*

56. The Debtors provide two (2) flexible spending programs for their Full-Time Employees. The first program is a flexible spending account (the “Flexible Spending Account”) available to all Full-Time Employees that enables them to contribute pre-tax dollars to an account available for payment of essential health care expenses that are not covered or partially covered by medical, dental and vision insurance plans. Employees may elect up to a

maximum of \$7,500 per year to put into the healthcare spending account. The second program is a dependant care flexible spending program (the “Dependent Care Program” and, together with the Flexible Spending Account, the “Flexible Spending Programs”) also available to all Full-Time Employees that enables them to contribute a maximum of \$5,000 per year in pre-tax deductions to an account available for eligible expenses, which include care at licensed nursery schools, before and after school care, day care, babysitter, and elder care.

57. The Flexible Spending Programs are administered through Discovery Benefits and are funded entirely by the participating Employees. The Debtors spend approximately \$750 per month in administrative costs associated with the Flexible Spending Programs. The Debtors estimate that there are *de minimis* administrative costs for the Flexible Spending Programs remaining unpaid as of the Petition Date. The Debtors expect to maintain the Flexible Spending Programs that remain unpaid as of the Petition Date and request authorization to continue such programs on a postpetition basis.

#### **Relief Requested**

58. To minimize the personal hardship the Employees would suffer if prepetition Employee Obligations were not paid when due or as expected, and to maintain morale and enhance the Debtors’ ability to retain Employees during this restructuring process, the Debtors respectfully request entry of the Interim Order and Final Order, pursuant to sections 105(a), 363(b), 507(a)(4) and (a)(5), 1107(a), 1108 and 1129(a)(9)(B) of the Bankruptcy Code, (a) authorizing the Debtors, in the exercise of their reasonable discretion, to pay and honor certain prepetition claims, honor obligations, continue programs and maintain funding, modify, change or discontinue programs or funding, in the ordinary course of business and consistent with past practice, relating to or arising from the Debtors’ Employee Obligations that (i) became due and payable prior to the Petition Date or (ii) will become due and payable in the period

between the Petition Date and the date of the Final Hearing (the “Interim Period”),  
(b) authorizing the applicable banks and other financial institutions to receive, honor, process and pay all checks and electronic funds transfer requests drawn on the Debtors’ payroll and general disbursement accounts and automatic payroll transfers relating to the Employee Obligations, and (c) modifying the automatic stay under section 362 of the Bankruptcy Code to permit the Debtors’ Employees, solely to the extent the Employees may assert claims under the Workers’ Compensation Program, to proceed with such claims.

### **Basis for Relief**

#### **A. Court Should Authorize Debtors To Honor Employee Obligations**

59. To maintain their operations and preserve the value of their estates, it is essential that the Debtors continue to operate, to the extent possible, in the ordinary course of their businesses. To achieve that result, the Debtors must retain the uninterrupted service and the loyalty of their employees. The maintenance and continuation of the Employee Programs and the related arrangements, as well as the payment of amounts owing in respect thereof, is essential to this goal. Accordingly, the Debtors submit that the relief requested herein is (a) critical to their ability to operate effectively and to preserve the value of their estates throughout these Chapter 11 Cases and (b) in the best interests of the Debtors, their estates and their creditors.

##### *(i) Certain Employee Obligations Are Entitled To Priority Treatment*

60. Pursuant to sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code, a substantial amount of the unpaid prepetition Employee Obligations – including most of the Unpaid Compensation – are entitled to administrative expense priority treatment in an amount up to \$11,725 for each individual Employee. To the extent such claims are afforded administrative priority status, the Debtors will be required to pay these claims in full to confirm a chapter 11 plan. See 11 U.S.C. § 1129(a)(9)(B) (requiring payment of certain allowed unsecured claims for

(a) wages, salaries, commissions, including vacation, severance and sick leave pay earned by an individual and (b) contributions to an employee benefit plan). Thus, granting the relief sought herein only affects the timing of certain payment amounts to Employees and will not meaningfully impact recoveries for general unsecured creditors. Indeed, the Debtors submit that payment of the Employee Obligations at this time will enhance value for the benefit of all interested parties.

(ii) *Payment of Certain of Employee Obligations Is Required by Law*

61. The Debtors also respectfully request authority to honor and pay the Unremitted Deductions and Unremitted Payroll Taxes to the appropriate third party entities when such obligations are owed. These amounts principally represent Employee earnings that governments, Employees and judicial authorities have designated for deduction or withholding from Employees' wages. Indeed, certain of the Unremitted Deductions, including contributions to the Employee Benefits and child support and alimony payments, are not property of the Debtors' estates because they have been withheld from Employees' wages on another party's behalf. See 11 U.S.C. § 541(b). Accordingly, continued payment of the Unremitted Deductions and Unremitted Payroll Taxes will not harm or prejudice the Debtors' creditors, including unsecured creditors.

62. Additionally, certain federal, state and provincial laws require the Debtors and their officers to make certain tax payments that have been withheld from their Employees' paychecks. See 26 U.S.C. §§ 6672 and 7501(a); see also City of Farrell v. Sharon Steel Corp., 41 F.3d 92, 95-97 (3d Cir. 1994) (finding that state law requiring a corporate debtor to withhold city income tax from its employees' wages created a trust relationship between debtor and the city for payment of withheld income taxes); DuCharmes & Co. Inc. v. State of Michigan (In re DuCharmes & Co.), 852 F.2d 194, 196 (6th Cir. 1988) (noting that individual officers of a



company may be held personally liable for failure to pay trust fund taxes). Accordingly, the Unremitted Payroll Taxes likely are not property of the Debtors' estates and the Debtors' officers may be held responsible if the Debtors are unable to timely remit the Unremitted Payroll Taxes.

63. Finally, the Debtors must continue certain of the programs described above in order to maintain the legal right to operate their businesses. This is especially true with respect to the Workers' Compensation Program – pursuant to state law, the Debtors' failure to adequately maintain the Workers' Compensation Program may prohibit them from operating in a particular jurisdiction. Thus, permitting the Debtors to continue to honor their obligations under the Workers' Compensation Program, including payment of the Unpaid Workers' Compensation Premium, will ensure a smooth transition to operations in chapter 11.

**B. Ample Authority Exists To Support Payment of the Employee Obligations and Continuation of Programs**

64. The Debtors submit that payment of the Employee Obligations and continuation of related programs are critical to the Debtors' continued, uninterrupted operations and, as such, are necessary and appropriate and may be authorized under sections 105(a), 363(b) 1107(a) and 1108 of the Bankruptcy Code and pursuant to the "doctrine of necessity."

*(i) Court May Rely on Section 363(b) of Bankruptcy Code to Grant Motion*

65. The Court may authorize the Debtors to pay the Employee Obligations arising or relating to the period before the Petition Date pursuant to section 363(b) of the Bankruptcy Code. See In re Ionosphere Clubs, Inc., 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (authorizing payment of certain prepetition obligations under section 363(b)). Section 363(b) provides that "the trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). To approve the use of a debtor's assets outside the ordinary course of business pursuant to section 363(b) of the

Bankruptcy Code, the Court must find that a “good business reason” exists for the use of such assets. See, e.g., Official Comm. of Unsecured Creditors v. Enron Corp. (In re Enron Corp.), 335 B.R. 22, 27-28 (S.D.N.Y. 2005) (quoting In re Lionel Corp., 722 F.2d 1063, 1071 (2d Cir. 1983)).

66. The business judgment rule is satisfied where “the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company.” Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.), 147 B.R. 650, 656 (S.D.N.Y. 1992) (quoting Smith v. Van Gorkom, 488 A.2d 858, 872 (Del. 1985)), appeal dismissed, 3 F.3d 49 (2d Cir. 1993). “Where the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.” Comm. of Asbestos-Related Litigants v. Johns-Manville Corp. (In re Johns-Manville Corp.), 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986). Courts in this district consistently have declined to interfere with corporate decisions absent a showing of bad faith, self-interest, or gross negligence, and have upheld a board’s decisions as long as such decisions are attributable to any “rational business purpose.” Integrated, 147 B.R. at 656 (quoting CRTF Corp. v. Federated Dep’t Stores, 683 F. Supp. 422, 436 (S.D.N.Y. 1988)). As discussed more fully herein, the Debtors’ requests to pay the Employee Obligations and continue related programs meet this standard because the failure to do so could have a material adverse impact on the day-to-day operations of the Debtors’ businesses.

(ii) *Court May Rely on Its General Equitable Powers To Grant Motion*

67. In addition, to supplement this explicit statutory power, the Court may authorize payment of prepetition claims in appropriate circumstances based on section 105(a) of

the Bankruptcy Code. Section 105(a) of the Bankruptcy Code, which codifies the inherent equitable powers of the bankruptcy court, empowers the Court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Under section 105(a) of the Bankruptcy Code, the Court may permit payments on account of prepetition obligations outside the context of a chapter 11 plan when such obligations are essential to the continued operation of a debtor’s business. See, e.g., In re Just For Feet, Inc., 242 B.R. 821, 824 (Bankr. D. Del. 1999) (acknowledging that “[c]ertain pre-petition claims . . . may need to be paid to facilitate a successful reorganization” and that “[s]ection 105(a) of the [Bankruptcy] Code provides a statutory basis for the payment of pre-petition claims”); In re Ionosphere Clubs, Inc., 98 B.R. at 175 (“The ability of a Bankruptcy Court to authorize the payment of pre-petition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept.”).

68. This flexible approach is particularly critical where a prepetition creditor provides vital goods or services to a debtor that would be unavailable if the debtor did not satisfy its prepetition obligations. In In re Structurlite Plastics Corp., 86 B.R. 922, 931 (Bankr. S.D. Ohio 1988), the bankruptcy court stated that “a bankruptcy court may exercise its equity powers under §105(a) [of the Bankruptcy Code] to authorize payment of pre-petition claims where such payment is necessary ‘to permit the greatest likelihood of survival of the debtor and payment of creditors in full or at least proportionately.’” (citation omitted) The court explained that “a *per se* rule proscribing the payment of pre-petition indebtedness may well be too inflexible to permit the effectuation of the rehabilitative purposes of the Code.” Id. at 932.

69. Payment of the Debtors’ Employee Obligations and continuation of related programs are imperative to the Debtors’ continued operation and ability to restructure.

The Debtors submit that payment of and honoring the Employee Obligations at this time will enhance value for the benefit of all interested parties because it will help ensure that the Employees, which are the lifeblood of the Debtors' business operations, continue to provide vital services to the Debtors at this critical juncture. The Debtors firmly believe that, should the Debtors be unable to honor the Employee Obligations, finding and attracting qualified talent would be extremely difficult and most likely would require higher salaries, guaranteed bonuses and overall higher cost compensation packages than are currently provided to the Debtors' Employees. The payment of the Employee Obligations and continuation of related programs are essential to assure the value of the Debtors' estates is maintained. Accordingly, the Court should exercise its equitable power to grant the relief requested in this Motion.

(iii) *Court May Rely on "Necessity of Payment" Doctrine To Grant Motion*

70. The "doctrine of necessity" or the "necessity of payment" doctrine functions in a chapter 11 case as a mechanism by which the bankruptcy court can exercise its equitable power to allow payment of critical prepetition claims not explicitly authorized by the Bankruptcy Code and further supports the relief requested herein. See In re Lehigh & New England Ry. Co., 657 F.2d 570, 581 (3d Cir. 1981) (holding that a court may authorize payment of prepetition claims if such payment is essential to continued operation of debtor); Dudley v. Mealey, 147 F.2d 268, 271 (2d Cir. 1945) (holding, in a hotel reorganization case, that court was not "helpless" to apply rule to supply creditors of non-railroad debtors where alternative was cessation of operations).

71. Preservation of the estate is often most critical and extremely difficult early in reorganization cases. For that reason, where failure to make payments of certain essential prepetition claims threatens to disrupt a debtor's efforts to reorganize, bankruptcy courts routinely invoke their equitable powers to authorize a debtor to pay such claims under the

doctrine of necessity. The rationale for the doctrine of necessity is consistent with the paramount goal of chapter 11 – “facilitating the continued operation and rehabilitation of the debtor . . . .” In re Ionosphere Clubs, Inc., 98 B.R. at 176; see also In re Eagle-Picher Indus., Inc., 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) (authorizing payment of prepetition claims as “necessary to avert a serious threat to the [c]hapter 11 process”).

72. The nature of the Debtors’ businesses and the extent of their operations make it essential for the Debtors to pay the Employee Obligations and continue related programs on an uninterrupted basis. Absent the relief requested herein, as discussed more fully herein, the Debtors’ Employees would be exposed to significant financial difficulties and considerable hardship and anxiety. This may, in turn, lead to attrition, disruption to the Debtors’ businesses and increased costs for the Debtors’ estates. Thus, granting the relief requested in this Motion will enhance the likelihood of the Debtors’ successful rehabilitation, maximize the value of the estates’ assets and benefit the estates’ creditors. Accordingly, the Debtors respectfully submit that it is imperative for them to make all payments in respect of the Employee Obligations and related programs.

(iv) *Payment of Taxes and Fees Is Valid Exercise of Debtors’ Fiduciary Duties Pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code*

73. Pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, debtors in possession are fiduciaries “holding the bankruptcy estate[s] and operating the business[es] for the benefit of [their] creditors and (if the value justifies) equity owners.” In re CoServ, L.L.C., 273 B. R. 487, 497 (Bankr. N.D. Tex. 2002); see also Unofficial Comm. of Equity Holders v. McManigle (In re Penick Pharm., Inc.), 227 B.R. 229, 232-33 (Bankr. S.D.N.Y. 1998) (“upon filing its petition, the Debtor became debtor in possession and, through its management . . . was burdened with the duties and responsibilities of a bankruptcy trustee”). Implicit in the fiduciary

duties of any debtor in possession is the obligation to “protect and preserve the estate, including an operating business’s going-concern value.” Id. Some courts have noted that there are instances in which a debtor can fulfill this fiduciary duty “only . . . by the preplan satisfaction of a prepetition claim.” Id. The CoServ court specifically noted that the preplan satisfaction of prepetition claims would be a valid exercise of the debtor’s fiduciary duty when the payment “is the only means to effect a substantial enhancement of the estate . . .” and also when the payment was to “sole suppliers of a given product.” 274 B.R. at 498.

74. The Debtors’ proposed payment of certain prepetition amounts and proposed continuation of programs related to their Employee Obligations satisfies each of these standards. The vast majority of the Debtors’ Employees rely exclusively on their compensation, benefits and reimbursement of expenses to satisfy their daily living expenses. Consequently, these Employees will be exposed to significant financial difficulties if the Debtors are not permitted to honor prepetition obligations for unpaid compensation, benefits and reimbursable expenses. Accordingly, the Debtors’ failure to satisfy such obligations will jeopardize Employee morale and loyalty when Employee support and workforce continuity is critical to their post-filing stabilization and overall restructuring efforts.

75. Furthermore, if the Court does not authorize the Debtors to honor their various obligations under the Medical, Dental and Vision Plans, the Employees may lose their health coverage and, thus, may become obligated to pay certain health care claims that were previously covered by insurance. The loss of health care coverage will result in considerable hardship and anxiety for Employees (and likely attrition) at a time when the Debtors need Employees to focus and perform their jobs at peak efficiency. Additionally, any Employee attrition would cause the Debtors to incur additional expenses related to finding appropriate and

experienced replacements, which could severely disrupt the Debtors' operations at an important juncture.

76. For all of the foregoing reasons, the relief requested herein will benefit the Debtors' estates and creditors by allowing the Debtors' business operations to continue without interruption. In the absence of such payments, the Debtors believe their Employees may seek alternative employment opportunities. Such a development would deplete the Debtors' workforce and hinder the Debtors' ability to reorganize, particularly given that the Debtors recently reduced their workforce to its minimal needs. The Employees are vital to the Debtors' business and successful reorganization. Any delay in paying the Employee Obligations would impose negative pressure upon the Debtors' relationship with their Employees at a key time in the Debtors' corporate history, and impair Employees' morale, dedication and cooperation. Moreover, the loss of valuable Employees and the recruiting efforts that would be required to replace such Employees would be a massive and costly distraction at a time when the Debtors should be focusing on their restructuring. Accordingly, the Debtors should be authorized to continue to honor their Employee Obligations, including those that accrued before the Petition Date, and to continue related programs.

77. Courts in this district have repeatedly recognized the importance of a debtor's employees to its operations and regularly grant relief similar to the relief requested herein. See, e.g., In re Eastman Kodak Co., Case No. 12-10202 (ALG) (Bankr. S.D.N.Y. Feb. 28, 2012) (Docket No. 444); In re Hostess Brands, Inc., Case No. 12-22052 (RDD) (Bankr. S.D.N.Y. Jan. 27, 2012) (Docket No. 194); In re AMR Corp., Case No. 11-15463 (SHL) (Bankr. S.D.N.Y. Nov. 29, 2011) (Docket No. 52); In re The Great Atl. & Pac. Tea Co., Inc., Case No. 10-24549 (RDD) (Bankr. S.D.N.Y. Dec. 14, 2010) (Docket No. 497); In re Uno Rest. Holdings

Corp., No. 10-10209 (MG) (Bankr. S.D.N.Y. Feb. 17, 2010) (Docket No. 150); In re DBSD N. Am. Inc., No. 09-13061 (REG) (Bankr. S.D.N.Y. June 15, 2009) (Docket No. 110); In re Ion Media Networks, Inc., No. 09-13125 (JMP) (Bankr. S.D.N.Y. May 21, 2009) (Docket No. 31); In re Chemtura Corp., No. 09-11233 (REG) (Bankr. S.D.N.Y. Apr. 13, 2009) (Docket No. 175); In re Ionosphere Clubs, Inc., 98 B.R. at 177 (discussing prior order authorizing payment of prepetition wages, salaries, medical benefits and business expense claims); Michigan Bureau of Workers' Disability Comp. v. Chateaugay Corp. (In re Chateaugay Corp.), 80 B.R. 279, 287 (S.D.N.Y. 1987) (affirming bankruptcy court order authorizing debtor to pay pre-bankruptcy wages, salaries, employee benefits and reimbursements and workers' compensation claims and premiums).

**C. Cause Exists To Authorize the Debtors' Financial Institutions To Honor Checks and Electronic Fund Transfers**

78. To facilitate implementation of the above-requested relief, the Debtors further request that the Court authorize and direct all applicable banks and financial institutions to receive, process, honor and pay any and all checks drawn or electronic fund transfers from their accounts whether such checks were presented prior to or after the Petition Date, to the extent such checks or electronic fund transfers are expressly identified by the Debtors as relating directly to the authorized payments of the Employee Obligations. The Debtors also respectfully request authority to issue new postpetition checks, or effect new electronic fund transfers, on account of such claims to replace any prepetition checks or electronic fund transfer requests that may be dishonored or rejected as a result of the commencement of the Chapter 11 Cases.

79. The Debtors believe that they have sufficient availability of funds to pay the amounts described herein in the ordinary course of business by virtue of cash reserves, expected cash flows from business operations and from the anticipated authorization to use the



prepetition lenders' cash collateral.<sup>19</sup> Pursuant to the Debtors' existing cash management system, the Debtors believe that checks or wire transfer requests can be readily identified as relating to an authorized payment made pursuant to a program relating to Employee Obligations. Accordingly, the Debtors believe that checks or wire transfer requests, other than those relating to authorized payments, will not be honored inadvertently and that all applicable financial institutions should be authorized, when requested by the Debtors, to receive, process, honor and pay any and all checks or wire transfer requests in respect of the Employee Obligations.

80. In light of the foregoing, the Debtors submit that the relief requested herein is necessary and appropriate, is in the best interests of their estates and creditors and should be granted in all respects.

**D. Court Should Authorize a Waiver of the Automatic Stay as it Applies to Workers' Compensation Claims**

81. The Debtors seek authorization, under section 362(d) of the Bankruptcy Code,<sup>20</sup> to permit the Employees to proceed with their workers' compensation claims in the appropriate judicial or administrative forum provided that such claims are pursued in accordance with the Workers' Compensation Programs and recoveries, if any, are limited to the proceeds from the applicable Workers' Compensation Program. All other claims, including any relating to matters covered by other insurance programs, will remain subject to the automatic stay. The Debtors believe that cause exists to modify the automatic stay because staying the workers' compensation claims could have a detrimental effect on the financial well-being and morale of

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<sup>19</sup> Contemporaneously with the filing of this Motion, the Debtors have filed a motion requesting authorization to use cash collateral.

<sup>20</sup> Section 362(a) of the Bankruptcy Code operates, in relevant part, to stay "the commencement or continuation . . . of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title . . ." 11 U.S.C. § 362(a)(1). Section 362(d) permits a debtor or other parties in interest to request a modification or termination of the automatic stay for "cause." *Id.* at § 362(d)(1).

the Employees and ultimately lead to the departure of certain Employees who are critical to the Debtors' operations. Such departures could cause a severe disruption in the Debtors' businesses to the detriment of all parties in interest.

**Reservation of Rights**

82. To the extent that any contract or agreement in connection with any of the Employee Obligations is deemed an executory contract within the meaning of section 365 of the Bankruptcy Code, the Debtors do not at this time intend to assume such contract or agreement. As such, the Court's authorization of payment shall not be deemed to constitute an assumption of such contract or agreement pursuant to section 365 of the Bankruptcy Code. The Debtors are currently in the process of reviewing all of their contracts and agreements and reserves all of their rights with respect thereto.

83. Additionally, nothing contained herein is intended or should be construed as (a) an agreement or admission by the Debtors as to the validity of any claim against their estates, (b) a waiver or impairment of the Debtors' rights to dispute any claim on any grounds, (c) a promise by the Debtors to pay any claim or (d) an implication or admission by the Debtors that such claim is payable pursuant to the Order granting the relief requested in this Motion.

**Debtors Satisfy Bankruptcy Rule 6003**

84. Bankruptcy Rule 6003 provides that, "[e]xcept to the extent that relief is necessary to avoid immediate and irreparable harm, the court shall not, within 21 days after the filing of the petition, grant relief regarding . . . a motion to use, sell, lease, or otherwise incur and obligation regarding property of the estate . . . ." Fed R. Bankr. P. 6003(b). The Debtors submit that, because the relief requested in this Motion is necessary to avoid immediate and irreparable harm to the Debtors for the reasons set forth herein, Bankruptcy Rule 6003 has been satisfied.

**Waiver of Bankruptcy Rules 6004(a) and 6004(h)**

85. To implement the foregoing successfully, the Debtors respectfully request a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the fourteen (14) day stay of an order authorizing the use, sale or lease of property under Bankruptcy Rule 6004(h). Pursuant to Bankruptcy Rule 6004(h), “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” As set forth above, the payments proposed herein are essential to prevent potentially irreparable damage to the Debtors’ operations, value and ability to reorganize. Accordingly, the Debtors submit that ample cause exists to justify a waiver of the fourteen (14) day stay imposed by Bankruptcy Rule 6004(h), to the extent that it applies.

**Motion Practice**

86. This Motion includes citations to the applicable rules and statutory authorities upon which the relief requested herein is predicated and a discussion of their application to this Motion. Accordingly, the Debtors submit that this Motion satisfies Rule 9013-1(a) of the Local Bankruptcy Rules for the Southern District of New York.

**Notice**

87. The Debtors have caused notice of this Motion to be provided by electronic mail, facsimile, regular or overnight mail and/or hand delivery to (a) the Office of the United States Trustee for the Southern District of New York, (b) the entities listed on the Consolidated List of Creditors Holding the 20 Largest Unsecured Claims filed pursuant to Bankruptcy Rule 1007(d), (c) counsel to the agents for the Debtors’ prepetition secured lenders, (d) counsel to the ad hoc secured group of Prepetition LP Lenders (as defined in the Montagner Declaration), (e) counsel to Harbinger Capital Partners, (f) the Internal Revenue Service, (g) the United States Attorney for the Southern District of New York, (h) the Federal Communications

Commission and (i) Industry Canada. Due to the urgency of the circumstances surrounding this Motion and the nature of the relief requested herein, the Debtors respectfully submit that no other or further notice is required or necessary.

**No Previous Request**

88. No prior motion for the relief requested herein has been made by the Debtors to this or any other court.

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WHEREFORE, for the reasons set forth above and in the Montagner Declaration, the Debtors respectfully request that the Court (a) enter an order, substantially in the form attached hereto as Exhibit A, granting the relief requested herein, and (b) grant such other and further relief as the Court may deem just and proper.

New York, New York  
Dated: May 14, 2012

/s/ Matthew S. Barr  
Paul S. Aronzon (*pro hac vice* pending)  
Matthew S. Barr  
Steven Z. Szanzer  
Karen Gartenberg  
MILBANK, TWEED, HADLEY & McCLOY LLP  
One Chase Manhattan Plaza  
New York, NY 10005-1413  
(212) 530-5000

*Proposed Counsel to Debtors and Debtors in Possession*

**Exhibit A**

**Proposed Interim Order**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re:	)	
	)	Chapter 11
	)	
LIGHTSQUARED INC., <i>et al.</i> ,	)	Case No. 12-_____ (___)
	)	
Debtors. <sup>1</sup>	)	Joint Administration Requested
	)	

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**INTERIM ORDER (A) AUTHORIZING, BUT NOT DIRECTING, DEBTORS  
TO (I) PAY CERTAIN PREPETITION WAGES AND REIMBURSABLE  
EMPLOYEE EXPENSES, (II) PAY AND HONOR EMPLOYEE BENEFITS AND  
(III) CONTINUE EMPLOYEE BENEFITS PROGRAMS AND  
(B) AUTHORIZING AND DIRECTING FINANCIAL INSTITUTIONS TO  
HONOR ALL RELATED CHECKS AND ELECTRONIC PAYMENT REQUESTS**

Upon the motion (the "Motion")<sup>2</sup> of LightSquared Inc. and certain of its affiliates, as debtors and debtors in possession (collectively, the "Debtors") in the above-captioned chapter 11 cases (the "Chapter 11 Cases"), for entry of an order (the "Interim Order"), pursuant to sections 105(a), 363(b), 507(a)(4)-(a)(5), 1107(a), 1108 and 1129(a)(9)(B) of title 11 of the United States Code, 11 U.S.C. §§101-1532 (as amended, the "Bankruptcy Code") and Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), (a) authorizing the Debtors to (i) pay certain prepetition wages, salaries and other compensation, such as the rank and file bonus program, taxes, withholdings and reimbursable expenses, (ii) pay and honor obligations relating to medical, severance and other benefits programs and

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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 or foreign tax or registration identification number, are: LightSquared Inc. (8845), LightSquared Investors Holdings Inc. (0984), One Dot Four Corp. (8806), One Dot Six Corp. (8763), SkyTerra Rollup LLC (N/A), SkyTerra Rollup Sub LLC (N/A), SkyTerra Investors LLC (N/A), TMI Communications Delaware, Limited Partnership (4456), LightSquared GP Inc. (6190), LightSquared LP (3801), ATC Technologies, LLC (3432), LightSquared Corp. (1361), LightSquared Finance Co. (6962), LightSquared Network LLC (1750), LightSquared Inc. of Virginia (9725), LightSquared Subsidiary LLC (9821), Lightsquared Bermuda Ltd. (7247), SkyTerra Holdings (Canada) Inc. (0631), SkyTerra (Canada) Inc. (0629) and One Dot Six TVCC Corp. (0040). The location of the debtors' corporate headquarters is 450 Park Avenue, Suite 2201, New York, NY 10022.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Motion or in the Montagner Declaration, as applicable.

(iii) continue their employee benefits programs on a postpetition basis (collectively and as further described in the Motion, the “Employee Obligations”), (b) authorizing and directing financial institutions to receive, process, honor and pay all checks issued and electronic requests made relating to the foregoing and (c) scheduling a final hearing (the “Final Hearing”) to consider entry of an order granting this and other relief on a permanent basis (the “Final Order”) granting the relief provided in the Interim Order on a permanent basis and the additional relief described in this Motion; and upon the Montagner Declaration; and it appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and it appearing that this proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and it appearing that venue of this proceeding and the Motion in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and notice of the Motion appearing adequate and appropriate under the circumstances; and the Court having found that no other or further notice is needed or necessary; and the Court having reviewed the Motion and the Montagner Declaration and having heard statements in support of the Motion at a hearing held before the Court (the “Hearing”); and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and it appearing, and the Court having found, that the relief requested in the Motion is in the best interests of the Debtors’ estates, their creditors and other parties in interest; and any objections to the relief requested in the Motion having been withdrawn or overruled on the merits; and after due deliberation and sufficient cause appearing therefor, it is hereby **ORDERED** that:

1. The Motion is granted on an interim basis to the extent set forth herein.
2. The Debtors are authorized and empowered, but not directed, to honor and pay, in accordance with the Debtors’ prepetition policies and practices and in the Debtors’ sole



discretion (subject to the terms of this Interim Order), prepetition amounts outstanding on account of the Employee Obligations. The Debtors will make no payments to Employees of amounts greater than \$11,725 for each individual on account of prepetition wages, salaries or commissions, including vacation, severance and sick leave pay.

3. The Debtors are authorized and empowered, but not directed, to continue to fulfill the Employee Obligations during the Interim Period in the ordinary course of business on a postpetition basis, in accordance with the Debtors' prepetition policies and practices and in the Debtors' sole discretion (subject to the terms of this Interim Order), and to pay and honor claims related thereto.

4. The Debtors are authorized and empowered, but not directed, to pay all postpetition costs and expenses incidental to payment of the Employee Obligations, including all administrative and processing costs and payments to outside professionals in the ordinary course of business.

5. The Debtors are authorized and empowered to forward any unpaid amounts on account of Deductions or Payroll Taxes to the appropriate third party recipients or taxing authorities in accordance with the Debtors' prepetition policies and practices.

6. Notwithstanding the foregoing, the Debtors are not authorized to accelerate payments not otherwise due and payable before the Final Hearing.

7. Pursuant to section 362(d) of the Bankruptcy Code, (a) Employees are authorized to proceed with their workers' compensation claims in the appropriate judicial or administrative forum under the Workers' Compensation Program, and the Debtors are authorized to take all steps necessary and appropriate with respect to the resolution of any such claims, and (b) the notice requirements pursuant to Bankruptcy Rule 4001(d) with respect to clause (a) are

waived, provided that such claims are pursued in accordance with the Workers' Compensation Programs and recoveries, if any, are limited to the proceeds from the applicable Workers' Compensation Program. This modification of the automatic stay pertains solely to claims under the Workers' Compensation Program.

8. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the Employee Obligations approved herein are authorized to receive, process, honor and pay all such checks and electronic payment requests when presented for payment (to the extent of funds on deposit), and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Interim Order.

9. The Debtors are authorized and empowered, in their sole discretion, to issue new postpetition checks, or effect new funds transfers on account of the Employee Obligations to replace any prepetition checks or funds transfer requests issued that may be lost or dishonored or rejected as a result of the commencement of these Chapter 11 Cases.

10. The banks and financial institutions subject to this Interim Order shall have no liability in connection with honoring any prepetition checks or funds transfer requests contemplated by this Interim Order.

11. Nothing in this Interim Order or any action taken by the Debtors in furtherance of the implementation hereof shall be deemed an assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code, and the Debtors' rights with respect to such matters are expressly reserved.

12. Nothing in the Motion or this Interim Order, nor the Debtors' payment of claims pursuant to this Interim Order, shall be construed as (a) an admission as to the validity of

any claim against the Debtors, (b) a waiver or impairment of the Debtors' rights to contest the validity or amount of any claim on any grounds, (c) a promise to pay any claim or (d) an implication or admission by the Debtors that such claim is payable pursuant to this Interim Order.

13. Bankruptcy Rule 6003(b) has been satisfied because the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors.

14. Notwithstanding the possible applicability of Bankruptcy Rules 6004(a), 6004(h) or otherwise, this Interim Order shall be immediately effective and enforceable upon its entry.

15. The Final Hearing to consider entry of the Final Order is scheduled for \_\_\_\_\_, 2012 at \_\_\_\_\_.m. (prevailing Eastern time) before this Court. On or before \_\_\_\_\_, 2012, the Debtors shall serve, by United States mail, first-class postage prepaid, notice of the entry of this Interim Order and of the Final Hearing (the "Final Hearing Notice"), together with copies of this Interim Order and the Motion, on: (a) the parties having been given notice of the Interim Hearing, (b) any party which has filed prior to such date a request for notices with this Court and (c) counsel to the official committee of unsecured creditors (the "Committee"). The Final Hearing Notice shall state that any party in interest objecting to the entry of the proposed Final order shall file written objections with the Clerk of Court no later than on \_\_\_\_\_, 2012 at 4:00 p.m. (prevailing Eastern time), which objections shall be served so as to be received on or before such date by: (a) LightSquared Inc., 450 Park Avenue, Suite 2201, New York, NY 10022, Attn: Marc R. Montagner and Curtis Lu, Esq., (b) proposed counsel to the Debtors, Milbank, Tweed, Hadley & McCloy LLP, One Chase Manhattan Plaza, New York, NY 10005, Attn: Matthew S. Barr, Esq. and Karen Gartenberg, Esq., (c) the Office

of the United States Trustee for the Southern District of New York and (d) counsel to the Committee.

16. The Debtors are authorized and empowered to take all actions necessary to effectuate the relief granted pursuant to this Interim Order, in accordance with the Motion.

17. The requirements set forth in Local Rule 9013-1 are satisfied.

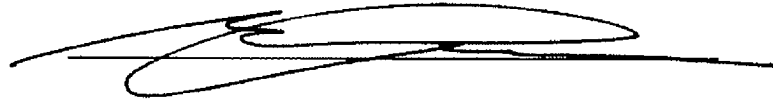
18. The Court retains jurisdiction with respect to all matters arising from or related to the implementation and interpretation of this Interim Order.

New York, New York  
Dated: \_\_\_\_\_, 2012

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UNITED STATES BANKRUPTCY JUDGE

Exhibit "J" to the Affidavit of Elizabeth Creary,  
sworn before me this 7<sup>th</sup> day of June, 2012.

A handwritten signature in black ink, appearing to read "Michael Colin Anderson", written over a horizontal line.

Commissioner for Taking Affidavits

Michael Colin Anderson,  
a Commissioner, etc., Province of  
Ontario, while a Student-at-Law.  
Expires May 8, 2015

Paul S. Aronzon (*pro hac vice* pending)  
Matthew S. Barr  
Steven Z. Szanzer  
Karen Gartenberg  
MILBANK, TWEED, HADLEY & M<sup>C</sup>CLOY LLP  
One Chase Manhattan Plaza  
New York, NY 10005-1413  
(212) 530-5000

*Proposed Counsel to Debtors and Debtors in Possession*

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

In re:	)	
	)	Chapter 11
LIGHTSQUARED INC., <i>et al.</i> ,	)	
	)	Case No. 12-_____ (___)
Debtors. <sup>1</sup>	)	Joint Administration Requested
	)	

**DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS  
(A) AUTHORIZING, BUT NOT DIRECTING, (I) CONTINUATION OF DEBTORS'  
INSURANCE POLICIES AND (II) PAYMENT OF CERTAIN OBLIGATIONS IN  
RESPECT THEREOF AND (B) AUTHORIZING AND DIRECTING FINANCIAL  
INSTITUTIONS TO HONOR ALL RELATED CHECKS  
AND ELECTRONIC PAYMENT REQUESTS**

LightSquared Inc. and certain of its affiliates, as debtors and debtors in possession  
(collectively, "LightSquared" or the "Debtors") in the above-captioned chapter 11 cases (the  
"Chapter 11 Cases"), file this motion (the "Motion") for entry of an order (the "Interim Order")  
(a) authorizing, but not directing, the Debtors, in their sole discretion, to (i) maintain and

<sup>1</sup> The debtors in these chapter 11 cases, along with the last four digits of each debtor's federal or foreign tax or registration identification number, are: LightSquared Inc. (8845), LightSquared Investors Holdings Inc. (0984), One Dot Four Corp. (8806), One Dot Six Corp. (8763), SkyTerra Rollup LLC (N/A), SkyTerra Rollup Sub LLC (N/A), SkyTerra Investors LLC (N/A), TMI Communications Delaware, Limited Partnership (4456), LightSquared GP Inc. (6190), LightSquared LP (3801), ATC Technologies, LLC (3432), LightSquared Corp. (1361), LightSquared Finance Co. (6962), LightSquared Network LLC (1750), LightSquared Inc. of Virginia (9725), LightSquared Subsidiary LLC (9821), Lightsquared Bermuda Ltd. (7247), SkyTerra Holdings (Canada) Inc. (0631), SkyTerra (Canada) Inc. (0629) and One Dot Six TVCC Corp. (0040). The location of the debtors' corporate headquarters is 450 Park Avenue, Suite 2201, New York, NY 10022.



continue to honor certain insurance programs and policies (including the renewal of those policies and agreements due to expire during these Chapter 11 Cases) and (ii) pay certain obligations in respect thereof including, without limitation, the payment of all premiums, premium financing payments, claims, deductibles, administrative expenses and all other charges and expenses incurred, on an uninterrupted basis, consistent with the Debtors' practices in effect prior to the commencement of the Debtors' Chapter 11 Cases, whether relating to the period prior to or after the commencement of these Chapter 11 Cases, (b) authorizing and directing financial institutions to receive, process, honor and pay all checks issued and electronic requests made relating to the foregoing and (c) scheduling a final hearing (the "Final Hearing") to consider entry of a final order (the "Final Order") granting the relief provided in the Interim Order on a permanent basis and the additional relief described in this Motion. In support of this Motion, the Debtors submit the Declaration of Marc R. Montagner, Chief Financial Officer and Interim Co-Chief Operating Officer of LightSquared Inc., (A) in Support of First Day Pleadings and (B) Pursuant to Rule 1007-2 of Local Bankruptcy Rules for United States Bankruptcy Court for Southern District of New York (the "Montagner Declaration"). In further support of this Motion, the Debtors respectfully state as follows:

### **Jurisdiction**

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).
2. Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The statutory bases for the relief requested herein are sections 105(a), 363(b), 1107 and 1108 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as

amended, the “Bankruptcy Code”) and Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

### **Background**

#### **A. Introduction**

4. On May 14, 2012 (the “Petition Date”), each of the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

5. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Debtors have requested the joint administration of these Chapter 11 Cases for procedural purposes. No trustee, examiner or statutory committee of unsecured creditors has been appointed in these Chapter 11 Cases.

#### **B. Overview of Debtors’ Businesses**

##### *(i) Debtors’ Satellite Business*

6. LightSquared, a mobile communications company with headquarters in New York and incorporated in Delaware in 1985, is the first private company to offer mobile satellite services throughout North America, initially using two geostationary satellites<sup>2</sup> as well as a portion of the electromagnetic spectrum known as the L-Band. Since its first satellite became operational in 1996, LightSquared has provided satellite communications services – which include data, voice, fax and dispatch services – to companies and federal, state, provincial,

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<sup>2</sup> These two first-generation satellites, known as MSAT-1 and MSAT-2, currently provide services to some existing customers, and have also, since March 10, 2012, provided emergency back-up service to all of LightSquared’s customers due to a solar flare(s), which temporarily disabled the SkyTerra-1 satellite, one of LightSquared’s two next-generation satellites. LightSquared is currently finalizing the assessment of the solar flare(s) prior to transitioning customers back to that satellite for service. LightSquared will also rely upon the MSAT system until such time that SkyTerra-2, LightSquared’s second next-generation satellite, is launched. Both MSAT-1 and MSAT-2 are approaching the ends of their useful lives and are part of the Prepetition LP Collateral (as defined below). They have, in the past, experienced anomalies and Solid State Power Amplifier failures and neither currently operates at full capacity.



local and foreign governments that are wholesale purchasers of bandwidth power and capacity, resellers of telephony, data and dispatch services and retail voice users. For example, LightSquared provides services to public safety officers, emergency responders and the United States military. Today, LightSquared's mobile satellite business generates approximately \$30 million in annual revenue and provides service to approximately 300,000 end users.

7. LightSquared launched SkyTerra-1 in November 2010, which, as mentioned above, is one of two next-generation satellites that have been constructed by LightSquared. LightSquared's next-generation satellites are two of the most powerful mobile satellites ever constructed. Each is equipped with a 22 meter (75 foot) diameter antenna, which provides ten (10) times better performance than that provided by LightSquared's prior satellites. The satellites have the capability of forming up to five hundred (500) beams over North America and can operate with devices that are as small as standard cell phones or USB modems. The SkyTerra-1 and SkyTerra-2 satellite networks utilize state-of-the art ground-based beam forming systems. Such systems allow flexibility in beam shapes, number, bandwidth allocation and beam power allocation, which is unprecedented in prior mobile satellite systems. SkyTerra-1 is fully operational, and SkyTerra-2 is constructed and stored in preparation for launch.

8. LightSquared currently operates three (3) lines of business, including Mobile Satellite Communications ("MSAT"), Mobile Data Services ("MDS") and Private Network Carriers ("PNC") through a wholesale business model whereby its partners bill the end users, and LightSquared bills its partners at a wholesale rate. Through these three lines of business, LightSquared has over fifteen wholesale partners, including, but not limited to, Comtech Mobile Datacom Corporation, XATA Corporation, SkyBitz, Outerlink, Omnistar, Wireless Matrix, EMS Technologies/Honeywell, Network Innovations, Glentel, Astrum, Infosat, Inmosat and

International Satellite Service, that collectively support approximately 300,000 subscribers across several markets throughout North America.

9. MSAT Business. LightSquared's MSAT business provides circuit-switched voice, low data rate services and push-to-talk ("PTT") services, which are sold through LightSquared's authorized wholesale service providers and are utilized by a variety of governmental agencies at the federal, state and local level, as well as by various markets in the enterprise space. LightSquared is currently the only commercial satellite operator in North America offering PTT service. LightSquared's two-way, PTT radio service over satellite is a popular option for communications in remote areas or during emergency situations, and its dispatch or two-way radio style is familiar to the public safety community and ideal for command and control. Thus, in the public/government sector, LightSquared's MSAT business serves end users in public safety, emergency management and defense as well as health and education.

10. Specifically, LightSquared's PTT products and services were utilized by public safety and education (such as the University of North Carolina Wilmington) end users during, and in preparation for, several disasters, including Hurricane Katrina (Mississippi Department of Wildlife, Fisheries and Parks), Hurricane Gustav (several federal, state and local agencies), Hurricane Irene (DE State Police, MD Emergency Management Agency), Kentucky Ice Storms (Kentucky Department for Public Health) and, most recently, the tornadoes in Kentucky (Kentucky Department for Public Health). In all of these disasters, LightSquared's mobile satellite service, with its PTT capability, provided instant communications for public safety agencies and a means for interoperability among disparate agencies.

11. Moreover, in recent years, the United States has faced a variety of costly natural and man-made disasters, including hurricanes, tornadoes, wildfires, flooding and

earthquakes, as well as the 9/11 terrorist attacks, which have amplified the need for dependable communications that enable organizations to communicate with each other. Often, the only means available to the public safety/emergency responder community to do so is through mobile satellite communications. To address these needs, federal, state and local agencies have voluntarily banded together with LightSquared in a public-private partnership to create the Satellite Mutual Aid Radio Talkgroup (“SMART”) program – enabling nationwide and regional interoperability at no additional cost to LightSquared users. Since SMART is a feature provided at no cost to LightSquared’s public safety end users, the SMART program, incorporating such SMART feature, is a cost-efficient program that delivers measurable return on investment – swift and reliable communications interoperability for emergency response and contingency operations. With the rapid growth of SMART, public safety and emergency responders have a resource that enables communications interoperability that is immediate, reliable and always available.

12. It is thus no surprise that the nationwide and regional SMART end users include, among others, (a) JSMART, utilized by public safety agencies across the country and managed by the DOJ Wireless Management, (b) LSMART, utilized nationally by law enforcement and managed by the U.S. Marshals Service, (c) USMART, utilized by urban search and rescue teams across the United States and managed by the Montgomery County, Maryland Fire & Rescue Service, (d) NE SMART, utilized by the northeast states and managed by the Connecticut State Police, (e) WSMART, utilized by the western states and managed by the California Emergency Management Agency and (f) MWSMART, utilized by the midwest states and managed by the Indiana Department of Homeland Security.

13. The MSAT line of business also serves various markets in the enterprise space, including maritime, oil and gas, utilities, transportation, media and recreation. In the

maritime vertical market, especially in Alaska, fishermen rely on LightSquared's PTT capability while at sea in extreme environments, especially north of 60° toward the Aleutians.

Additionally, enterprise users in the oil and gas industry rely on LightSquared's mobile satellite service in the Gulf region to communicate with workboats and on oil rigs/platforms for instantaneous communication between rigs/boats and back to operations centers on the coast.

14. MDS Business. LightSquared's second line of business, MDS, is a low data rate service offering used primarily for applications such as fleet and load management, email, vehicle tracking, two-way messaging and broadcast messaging. Like LightSquared's MSAT services, MDS is sold through LightSquared's authorized wholesale service providers and is utilized by various end users. One such end user, the New Mexico State Police, utilizes MDS in police cruisers to enable officers to perform database lookups on ruggedized laptops in remote areas where no terrestrial communications exist and LightSquared's satellite service is the only means by which to meet this critical data communications requirement in an effective manner.

15. PNC Business. Finally, LightSquared's third line of business, PNC, enables customers to lease bandwidth from LightSquared over which they offer custom satellite data solutions (typically, asset tracking services for truck and rail) to a wide variety of end users. In connection therewith, LightSquared's PNC customers are responsible for developing a custom air interface, providing hub, end-user equipment and servicing end users. One of LightSquared's largest PNC customers, SkyBitz, provides asset tracking services through LightSquared's satellite capacity for Tri State Motor Transit Co., an end user that hauls high-risk cargo such as munitions, explosives and nuclear fuel bound for sites from coast to coast. LightSquared's satellite capacity ensures that trailers hauling this cargo are constantly tracked where terrestrial communications do not exist. Another PNC customer, Comtech Mobile Datacom Corp., provides service to the

United States military, utilizing LightSquared's service in North America in connection with the Blue Force Tracking system that tracks all military assets.

(ii) *Debtors' Terrestrial Component of Satellite Business*

16. In the late 1990s, LightSquared determined that adding a terrestrial (*i.e.*, land-based) component to its satellite system would optimize the use of the L-Band and provide a communications system with superior reliability and coverage. By combining a nationwide system of terrestrial base stations with one of the largest commercial satellites ever launched – the state-of-the-art SkyTerra-1 – LightSquared could offer coverage of a satellite system in North America and the capacity of a next-generation, high-speed wireless broadband network.

17. LightSquared determined that a significant market opportunity was created for a wholesale-only, 4th Generation Long Term Evolution (“4G LTE”) wireless broadband network due to, among other things, (a) the proliferation of new mobile devices, such as smartphones and tablets, which accelerated demand for ubiquitous, on-the-go data-rich Internet services, (b) limited wireless network capacity available to support increased data usage and (c) substantial costs and barriers to entry preventing smaller carriers and new operators from deploying nationwide 4G LTE networks. LightSquared believed that many wireless operators would face significant challenges meeting network demands due to spectrum availability and capital shortages because the wireless communications industry was (and currently remains) dominated by a small number of established, national wireless carriers and current levels of data transmission already utilized significant network capacity. This led LightSquared to conclude that some carriers would be unable to deploy their own 4G LTE networks in a timely and cost-effective manner, while others would be unable to install enough capacity to serve the needs of their existing customer bases, thereby resulting in such carriers being unable to offer comparable

service quality and speeds on a cost-competitive basis with the largest national carriers. To address this imbalance, LightSquared's strategy was, and currently remains, to enable a broad range of potential wholesale customers to launch competitive retail wireless service offerings using wholesale capacity on LightSquared's 4G LTE network.

18. Accordingly, LightSquared initiated the process of building the only 4G LTE open wireless broadband network that incorporates both terrestrial (*i.e.*, land-based) and satellite coverage throughout North America and offers people the speed, value and reliability of universal connectivity, wherever they may be located. The satellite component of the system would provide service to the population in areas not otherwise covered by terrestrial systems. Through its wholesale-only business model, entities without their own wireless network, or that have limited geographic coverage or spectrum, will be able to market and sell their own devices, applications and services using the LightSquared network at a competitive price and without retail competition from LightSquared. This, in turn, will enable manufacturers and retailers to provide a solution for consumers, while creating new customer relationships and ongoing revenue streams for themselves. LightSquared's partners will also be able to develop their own devices, applications and services on the LightSquared network because it is a completely open network system.

19. As of the Petition Date, the Debtors employed approximately 168 people in the United States and Canada. As of February 29, 2012, the Debtors had approximately \$4.48 billion in assets (book value) and \$2.29 billion in liabilities.

**C. Additional Information**

20. Additional information regarding the Debtors' businesses, assets, capital structure and the circumstances leading to the filing of these Chapter 11 Cases is set forth in the Montagner Declaration, which was filed contemporaneously herewith.

**Insurance Programs**

**Policies**

21. In connection with the operation of the Debtors' businesses and the management of their properties, the Debtors maintain a comprehensive insurance program that provides coverage related to, among other things, property damage, general liability, umbrella liability, automobile liability, fiduciary liability, employment practices liability,<sup>3</sup> cargo, directors and officers' liability, space insurance and international liability (collectively, the "Insurance Programs"). A detailed list of the Debtors' policies in effect under the Insurance Programs is attached hereto as Exhibit A (collectively, the "Policies").

22. The Debtors maintain certain general insurance programs to help manage the risks associated with their business operations in the United States, Canada and internationally when employees travel to countries outside of the United States and Canada. In addition, the Debtors maintain in-orbit insurance on their SkyTerra-1 satellite (the "Satellite Insurance Program") that covers losses and liabilities associated with the satellite of up to \$250,000,000. It is important that the Debtors maintain the Satellite Insurance Program in order

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<sup>3</sup> The Debtors' workers' compensation insurance policies, along with the Debtors' medical, dental and vision benefits are described in further detail in the Debtors' Motion for Entry of Interim and Final Orders (A) Authorizing, but not Directing, Debtors (I) To Pay Certain Prepetition Wages and Reimbursable Employee Expenses, (II) To Pay and Honor Employee Medical and Other Benefits and (III) To Continue Employee Benefits Programs and (B) Authorizing Financial Institutions Honor All Related Checks and Electronic Payment Requests (the "Employee Wages and Benefits Motion"). The Debtors do not seek authority to continue to administer their prepetition insurance coverage policies and practices related to workers' compensation, medical, dental and vision benefits under this Motion, but rather request such authority as part of the Employee Wages and Benefits Motion filed contemporaneously herewith.

to protect the value of this critical asset because the satellite is not covered by any of the other Insurance Programs.

Premiums and Fees

23. The Debtors are required to pay premiums under the Insurance Programs based upon a fixed rate established and billed by each individual insurance provider. Last year, the Debtors' annual premiums together with the associated taxes and fees for the Insurance Programs (the "Insurance Obligations") totaled approximately \$4,200,000.

24. Pursuant to their Insurance Programs, the Debtors are required to pay various deductibles and related fees. For the current policy periods and the immediately preceding policy periods, no obligations have accrued with respect to deductibles under the Insurance Programs, except the employment practices liability policy. With respect to the Debtors' insurance policy that covers employment practices liability, the Debtors estimate that up to \$75,000 of deductibles may accrue over the next several months for the current policy period.

25. The Debtors employ several insurance agents including Willis North America, Inc., Willis Inspace and Aon Financial Services Group (together, the "Insurance Agents") to assist with the procurement and negotiation of their Insurance Programs. All broker fees incurred by the Debtors in connection with the Insurance Programs are absorbed into the Insurance Obligations. No separate broker fees are paid to the Insurance Agents.

26. Coverage under the current Satellite Insurance Program policy commenced on November 15, 2011. Pursuant to this policy, the Debtors became liable for total premiums of approximately \$3.45 million for coverage until November 15, 2012. The Debtors negotiated a payment schedule whereby they pay this premium in quarterly installments, and the



Debtors intend to make the final installment payment of approximately \$862,000 on or before August 12, 2012. As of the Petition Date, the Debtors believe that no other prepetition amounts are accrued and outstanding with respect to the Insurance Programs. Certain Insurance Programs, including the Satellite Insurance Program, will expire on August 1, 2012 and November 15, 2012, if not renewed – which the Debtors intend to do in the ordinary course of business.

27. The Insurance Programs are essential to the preservation of the value of the Debtors' businesses, property and assets and are required under the Debtors' prepetition credit agreements. Failure to pay premiums for the Policies when due may harm the Debtors' estates in several ways, including the loss of insurance coverage and subsequent need to obtain replacement insurance on an emergency basis, likely at a higher price.

28. The Debtors do not believe that they need Court approval to maintain their existing Policies or to amend, extend or renew them in the ordinary course of business. Nonetheless, in an exercise of prudence, the Debtors respectfully request entry of the Interim Order and Final Order authorizing them, in their discretion, to pay any prepetition Insurance Obligations that are necessary or appropriate to maintain insurance coverage in current effect and, at their sole discretion, to amend, extend or renew the necessary insurance coverage.

**Relief Requested**

29. By this Motion, the Debtors respectfully request entry of the Interim and Final Orders, pursuant to sections 105(a), 363(b), 1107 and 1108 of the Bankruptcy Code, (a) authorizing, but not directing, the Debtors, in their sole discretion, to (i) maintain and continue to honor certain Insurance Programs and Policies (including the renewal of those policies and agreements due to expire during these Chapter 11 Cases) and (ii) pay certain obligations in respect thereof, including, without limitation, the payment of all premiums,

premium financing payments, claims, deductibles, administrative expenses and all other charges and expenses incurred and becoming due and payable in the period between the Petition Date and the date of the Final Hearing (the “Interim Period”), on an uninterrupted basis, consistent with the Debtors’ practices in effect prior to the commencement of the Debtors’ Chapter 11 Cases, whether relating to the period prior to or after the commencement of these Chapter 11 Cases, and (b) authorizing and directing financial institutions to receive, process, honor and pay all checks issued and electronic requests made relating to the foregoing.

**Basis for Relief**

**A. Ample Authority Exists To Continue To Maintain Insurance Coverage**

30. The Debtors submit that continuation of the Insurance Programs and satisfaction and payment of the Insurance Obligations are necessary and appropriate and may be authorized under sections 105(a), 363(b), 1107(a) and 1108 of the Bankruptcy Code and pursuant to the “doctrine of necessity.”

*(i) Court May Rely on Section 363(b) of Bankruptcy Code To Grant Motion*

31. The Court may authorize the Debtors to pay the Insurance Obligations arising or relating to the period before the Petition Date pursuant to section 363(b) of the Bankruptcy Code. See In re Ionosphere Clubs, Inc., 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (authorizing payment of certain prepetition obligations under section 363(b)). Section 363(b) of the Bankruptcy Code provides that “the trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). To approve the use of a debtor’s assets outside the ordinary course of business pursuant to section 363(b) of the Bankruptcy Code, the Court must find that a “good business reason” exists for the use of such assets. See, e.g., Official Comm. of Unsecured Creditors v. Enron Corp. (In re Enron

Corp.), 335 B.R. 22, 27-28 (S.D.N.Y. 2005) (quoting In re Lionel Corp., 722 F.2d 1063, 1071 (2d Cir. 1983)).

32. The business judgment rule is satisfied where “the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company.” Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.), 147 B.R. 650, 656 (S.D.N.Y. 1992) (quoting Smith v. Van Gorkom, 488 A.2d 858, 872 (Del. 1985)), appeal dismissed, 3 F.3d 49 (2d Cir. 1993). “Where the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.” Comm. of Asbestos-Related Litigants v. Johns-Manville Corp. (In re Johns-Manville Corp.), 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986). Courts in this district consistently have declined to interfere with corporate decisions absent a showing of bad faith, self-interest or gross negligence, and have upheld a board’s decisions as long as such decisions are attributable to any “rational business purpose.” Integrated, 147 B.R. at 656 (quoting CRTE Corp. v. Federated Dep’t Stores, 683 F. Supp. 422, 436 (S.D.N.Y. 1988)). As discussed more fully herein, the Debtors’ request to continue the Insurance Programs and pay the Insurance Obligations meet this standard because the failure to continue the Insurance Programs and pay the Insurance Obligations could have a material adverse impact on the day-to-day operations of the Debtors’ businesses.

*(ii) Court May Rely on Its General Equitable Powers To Grant Motion*

33. In addition, to supplement this explicit statutory power, the Court may authorize payment of prepetition claims in appropriate circumstances based on section 105(a) of the Bankruptcy Code. Section 105(a) of the Bankruptcy Code, which codifies the inherent

equitable powers of the Court, empowers the bankruptcy court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Under section 105(a) of the Bankruptcy Code, the Court may permit payments on account of prepetition obligations outside the context of a chapter 11 plan when such obligations are essential to the continued operation of the debtor’s business. See, e.g., In re Just For Feet, Inc., 242 B.R. 821, 824 (D. Del. 1999) (acknowledging that “[c]ertain pre-petition claims . . . may need to be paid to facilitate a successful reorganization” and that “[s]ection 105(a) of the [Bankruptcy] Code provides a statutory basis for the payment of pre-petition claims”); In re Ionosphere Clubs, Inc., 98 B.R. at 175 (“The ability of a Bankruptcy Court to authorize the payment of pre-petition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept”).

34. This flexible approach is particularly critical where a prepetition creditor provides vital goods or services to a debtor that would be unavailable if the debtor did not satisfy its prepetition obligations. In In re Structurlite Plastics Corp., 86 B.R. 922, 931 (Bankr. S.D. Ohio 1988), the bankruptcy court stated that “a bankruptcy court may exercise its equity powers under §105(a) [of the Bankruptcy Code] to authorize payment of pre-petition claims where such payment is necessary ‘to permit the greatest likelihood of survival of the debtor and payment of creditors in full or at least proportionately.’” (citation omitted). The court explained that “a *per se* rule proscribing the payment of pre-petition indebtedness may well be too inflexible to permit the effectuation of the rehabilitative purposes of the Code.” Id. at 932.

35. Continuation of the Debtors’ Insurance Programs is imperative to the Debtors’ continued operation and ability to restructure, and the payment of the Insurance Obligations is essential to assure the value of the Debtors’ estates is maintained. The Debtors

need to minimize the risks associated with operating their businesses and managing valuable assets, including the SkyTerra-1 satellite, in order to ensure that they can continue operating through the reorganization process. Indeed, the Satellite Insurance Program protects the Debtors from various potential losses or liabilities associated with the SkyTerra-1 satellite, one of the Debtors' most significant assets. Absent such coverage, the Debtors would be at risk of suffering substantial losses if a problem occurs with respect the SkyTerra-1 satellite. Similarly, the Debtors require their skilled management team and members of the board of directors (the "Board") to focus their efforts on the Debtors' restructuring process. Continuation of the Debtors' directors' and officers' insurance coverage provides peace of mind and allows management and the Board to concentrate on the potential avenues of restructuring. Absent such coverage, which directors and officers receive in the ordinary course, the Debtors' management team and the Board may get distracted from their duties if they felt that they may be subject to personal liability. Even worse, some key members may resign, leaving the Debtors with vacancies at critical positions. Attempting to replace such individuals may result in greater expense to the Debtors (*e.g.*, higher wages), though the Debtors might even have difficulty filling the positions without providing directors' and officers' liability coverage. Such a disruption would drastically impair the Debtors' reorganization efforts. Therefore, the Court should exercise its equitable power to grant the relief requested in this Motion.

(iii) *Court May Rely on "Necessity of Payment" Doctrine To Grant Motion*

36. The "doctrine of necessity" or the "necessity of payment" doctrine functions in a chapter 11 case as a mechanism by which the bankruptcy court can exercise its equitable power to allow payment of critical prepetition claims not explicitly authorized by the Bankruptcy Code and further supports the relief requested herein. See In re Lehigh & New

England Ry. Co., 657 F.2d 570, 581 (3d Cir. 1981) (holding that a court may authorize payment of prepetition claims if such payment is essential to continued operation of debtor); Dudley v. Mealey, 147 F.2d 268, 271 (2d Cir. 1945) (holding, in a hotel reorganization case, that court was not “helpless” to apply rule to supply creditors of non-railroad debtors where alternative was cessation of operations).

37. Preservation of the estate is often most critical and extremely difficult early in reorganization cases. For that reason, where failure to make payments of certain essential prepetition claims threatens to disrupt a debtor’s efforts to reorganize, bankruptcy courts routinely invoke their equitable powers to authorize a debtor to pay such claims under the doctrine of necessity. The rationale for the doctrine of necessity is consistent with the paramount goal of chapter 11 — “facilitating the continued operation and rehabilitation of the debtor . . . .” Ionosphere Clubs, 98 B.R. at 176; see also In re Eagle-Picher Indus., 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) (authorizing payment of prepetition claims as “necessary to avert a serious threat to the [c]hapter 11 process”).

38. The Debtors are required legally and contractually to maintain certain Insurance Programs, and the nature of the Debtors’ businesses makes it essential for them to maintain all Insurance Programs on an ongoing and uninterrupted basis. The Insurance Programs are typically renewed annually. The inability to pay any Insurance Obligation could result in one or more of the Debtors’ insurance carriers declining to renew an Insurance Program or refusing to enter into new insurance agreements with the Debtors in the future. If the Insurance Programs lapse without renewal, the Debtors could be exposed to substantial liability to the detriment of all parties in interest. Accordingly, the continuation of the Insurance Programs and the ability to pay, in the Debtors’ discretion, all Insurance Obligations arising

under the Insurance Programs is essential to preserve the Debtors' businesses and the value of the Debtors' estates for all parties in interest. In addition, in order to comply with the guidelines of the Office of the U.S. Trustee, the Debtors must maintain the Insurance Programs.

(iv) *Maintenance of Insurance Coverage Is Valid Exercise of Debtors' Fiduciary Duties Pursuant to Bankruptcy Code Sections 1107(a) and 1108*

39. Pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, debtors in possession are fiduciaries "holding the bankruptcy estate[s] and operating the business[es] for the benefit of [their] creditors and (if the value justifies) equity owners." In re CoServ, L.L.C., 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002); see also Unofficial Comm. of Equity Holders v. McManigle (In re Penick Pharm., Inc.), 227 B.R. 229, 232-33 (Bankr. S.D.N.Y. 1998) ("upon filing its petition, the Debtor became debtor in possession and, through its management . . . was burdened with the duties and responsibilities of a bankruptcy trustee"). Implicit in the fiduciary duties of any debtor in possession is the obligation to "protect and preserve the estate, including an operating business's going-concern value." Id. Some courts have noted that there are instances in which a debtor can fulfill this fiduciary duty "only . . . by the preplan satisfaction of a prepetition claim." Id. The CoServ court specifically noted that the preplan satisfaction of prepetition claims would be a valid exercise of the debtor's fiduciary duty when the payment "is the only means to effect a substantial enhancement of the estate . . . ." and also when the payment was to "sole suppliers of a given product." 273 B.R. at 498.

40. The nature of the Debtors' businesses and the extent of their operations make it essential for the Debtors to maintain their Insurance Programs on an ongoing and uninterrupted basis. The Debtors respectfully submit that they need to maintain and continue their Policies, which provide a comprehensive range of coverage for the Debtors, their businesses and their properties, in full force and effect. If the Debtors' Policies lapse during

these Chapter 11 Cases due to a failure of the Debtors to pay any necessary renewal premiums, the Debtors would be exposed to potential substantial liability to others and potential substantial loss relating to property of the Debtors. In particular, the nature of the Debtors' businesses makes them highly dependent on the continuing functionality of critical assets, including the SkyTerra-1 satellite, which must be protected to assure the continued operation of the Debtors' businesses. In addition, continuation of the directors' and officers' liability policies is necessary to the retention of the Debtors' senior management, who are critical to the success of the Debtors' businesses and reorganization efforts, and members of the Debtors' board of directors. The Debtors must make all payments in respect of the Insurance Programs.

41. Finally, the prepetition amounts proposed to be paid, if any, in respect of the Insurance Programs are relatively small compared with the size of the Debtors' estates, the importance of the Debtors' employees to the Debtors' reorganization efforts and the potentially substantial liability the Debtors could face absent such insurance coverage. Therefore, the continuation of the Insurance Programs, on an uninterrupted basis, and the payment of all prepetition and postpetition Insurance Obligations arising under the Insurance Programs are essential to preserve the Debtors' businesses and preserve the value of the Debtors' estates for all creditors.

42. In other large chapter 11 cases, courts in this district regularly grant relief similar to that requested herein. See, e.g., In re Eastman Kodak Co., Case No. 12-10202 (ALG) (Bankr. S.D.N.Y. January 19, 2012) [Docket No. 28]; In re AMR Corp., Case No. 11-15463 (SHL) (Bankr. S.D.N.Y. November 29, 2011); In re Hostess Brands, Inc., Case No. 12-22052 (RDD) (Bankr. S.D.N.Y. Jan. 13, 2012) [Docket No. 70]; In re The Great Atl. & Pac. Tea Co., Inc., Case No. 10-24549 (RDD) (Bankr. S.D.N.Y. August 18, 2011) [Docket No. 2374]; In re



Borders Group, Inc., Case No. No. 11-10614 (MG) (Bankr. S.D.N.Y. March 15, 2011) [Docket No. 386]; In re TerreStar Networks Inc., Case No. 10-15446 (SHL) (Bankr. S.D.N.Y. Nov. 08, 2010) [Docket No. 88]; In re Sbarro, Inc., Case No. 11-11527 (SCC) (Bankr. S.D.N.Y. May 3, 2011 [Docket No. 146]; In re The Reader's Digest Ass'n, Inc., Case No. 09-23529 (RDD) (Bankr. S.D.N.Y. Sept. 17, 2009 [Docket No. 93]; In re Uno Restaurant Holdings Corp., Case No. 10-10209 (MG) (Bankr. S.D.N.Y. Feb. 17, 2010) [Docket No. 144] (authorizing debtors to maintain their insurance policies and pay outstanding prepetition amounts); In re ION Media Networks, Inc., Case No. 09-13125 (JMP) (Bankr. S.D.N.Y. June 23, 2009) [Docket No. 91] (same); In re DBSD N. Am., Inc., Case No. 09-13061 (REG) (Bankr. S.D.N.Y. June 15, 2009) [Docket No. 111] (same); In re Chemtura Corp., Case No. 09-11233 (REG) (Bankr. S.D.N.Y. Apr. 13, 2009) [Docket No. 179] (same).

43. Accordingly, the Court should grant the relief requested herein because maintenance of the Insurance Programs and payment of all Insurance Obligations is warranted and is in the best interests of the Debtors' estates, creditors and all parties in interest.

**B. Cause Exists To Authorize the Debtors' Financial Institutions To Honor Checks and Electronic Fund Transfers**

44. To facilitate implementation of the above-requested relief, the Debtors further request that the Court authorize and direct all applicable banks and financial institutions to receive, process, honor and pay any and all checks drawn or electronic fund transfers from their accounts, whether such checks were presented prior to or after the Petition Date, to the extent such checks or electronic fund transfers are expressly identified by the Debtors as relating directly to the authorized payments of Insurance Obligations. The Debtors also seek authority to issue new postpetition checks, or effect new electronic fund transfers, on account of such claims

to replace any prepetition checks or electronic fund transfer requests that may be dishonored or rejected as a result of the commencement of the Chapter 11 Cases.

45. The Debtors believe that they have sufficient availability of funds to pay the amounts described herein in the ordinary course of business by virtue of cash reserves, expected cash flows from business operations and from the anticipated authorization to use the prepetition lenders' cash collateral.<sup>4</sup> Pursuant to the Debtors' existing cash management system, the Debtors believe that checks or wire transfer requests can be readily identified as relating to an authorized payment made pursuant to a Policy. Accordingly, the Debtors believe that checks or wire transfer requests, other than those relating to authorized payments, will not be honored inadvertently and that all applicable financial institutions should be authorized, when requested by the Debtors, to receive, process, honor and pay any and all checks or wire transfer requests in respect of the Insurance Programs.

46. In light of the foregoing, the Debtors submit that the relief requested herein is necessary and appropriate, is in the best interests of their estates and creditors and should be granted in all respects.

#### **Reservation of Rights**

47. To the extent that any contract or agreement in connection with any of the Insurance Programs is deemed an executory contract within the meaning of section 365 of the Bankruptcy Code, the Debtors do not at this time intend to assume such contract or agreement. As such, the Court's authorization of payment shall not be deemed to constitute an assumption of such contract or agreement pursuant to section 365 of the Bankruptcy Code. The Debtors are

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<sup>4</sup> Contemporaneously with the filing of this Motion, the Debtors have filed a motion seeking authorization to use cash collateral.

currently in the process of reviewing all of their contracts and agreements and reserve all of their rights with respect thereto.

48. Additionally, nothing contained herein is intended or should be construed as (a) an agreement or admission by the Debtors as to the validity of any claim against their estates, (b) a waiver or impairment of the Debtors' rights to dispute any claim on any grounds, (c) a promise by the Debtors to pay any claim or (d) an implication or admission by the Debtors that such claim is payable pursuant to an order granting the relief requested in this Motion.

**Debtors Satisfy Bankruptcy Rule 6003**

49. Bankruptcy Rule 6003 provides that, "[e]xcept to the extent that relief is necessary to avoid immediate and irreparable harm, the court shall not, within 21 days after the filing of the petition, issue an order granting . . . a motion to use, sell, lease, or otherwise incur an obligation regarding property of the estate . . . ." Fed R. Bankr. P. 6003(b). The Debtors submit that, because the relief requested in this Motion is necessary to avoid immediate and irreparable harm to the Debtors for the reasons set forth herein, Bankruptcy Rule 6003 has been satisfied.

**Waiver of Bankruptcy Rule 6004(a) and 6004(h)**

50. To implement the foregoing successfully, the Debtors respectfully request a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the fourteen (14)-day stay of an order authorizing the use, sale or lease of property under Bankruptcy Rule 6004(h). Pursuant to Bankruptcy Rule 6004(h), "[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise." As set forth above, the payments proposed herein are essential to prevent potentially irreparable damage to the Debtors' operations, value and ability to reorganize. Accordingly, the Debtors submit that ample cause exists to justify a waiver of the fourteen (14)-day stay imposed by Bankruptcy Rule 6004(h), to the extent that it applies.

**Motion Practice**

51. This Motion includes citations to the applicable rules and statutory authorities upon which the relief requested herein is predicated, and a discussion of their application to this Motion. Accordingly, the Debtors submit that this Motion satisfies Rule 9013-1(a) of the Local Bankruptcy Rules for the Southern District of New York.

**Notice**

52. The Debtors have caused notice of this Motion to be provided by electronic mail, facsimile, regular or overnight mail and/or hand delivery to (a) the U.S. Trustee, (b) the entities listed on the Consolidated List of Creditors Holding the 20 Largest Unsecured Claims filed pursuant to Bankruptcy Rule 1007(d), (c) counsel to the agents for the Debtors' prepetition secured lenders, (d) counsel to the ad hoc secured group of Prepetition LP Lenders (as defined in the Montagner Declaration), (e) counsel to Harbinger Capital Partners, (f) the Internal Revenue Service, (g) the United States Attorney for the Southern District of New York, (h) the Federal Communications Commission and (i) Industry Canada. Due to the urgency of the circumstances surrounding this Motion and the nature of the relief requested herein, the Debtors respectfully submit that no other or further notice is required or necessary.

**No Previous Request**

53. No prior motion for the relief requested herein has been made by the Debtors to this or any other court.

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WHEREFORE, for the reasons set forth above and in the Montagner Declaration, the Debtors respectfully request that the Court (a) enter the order, substantially in the form attached hereto as Exhibit B, granting the relief requested herein and (b) grant such other and further relief as the Court may deem just and proper.

New York, New York  
Dated: May 14, 2012

/s/ Matthew S. Barr  
Paul S. Aronzon (*pro hac vice* pending)  
Matthew S. Barr  
Steven Z. Szanzer  
Karen Gartenberg  
MILBANK, TWEED, HADLEY & McCLOY LLP  
One Chase Manhattan Plaza  
New York, NY 10005-1413  
(212) 530-5000

*Proposed Counsel to Debtors and Debtors in Possession*

**Exhibit A**

**Schedule of Insurance Policies**

### SCHEDULE OF INSURANCE POLICIES

Type of Policy	Insurance Company	Term	Policy Number
US Commercial Package, including General Liability and Property	Chubb	2/24/2012-2/24/2013	35782862
Umbrella Liability	RSUI	2/24/2012-2/24/2013	NHA059131
Automobile	Chubb	2/24/2012-2/24/2013	74969710
International Package	Chubb	2/24/2012-2/24/2013	70212607
Fiduciary Liability	Chubb	2/24/2012-2/24/2013	8221-4306
Employment Practices Liability	Chubb	2/24/2012-2/24/2013	8223-2164
Cargo	C.N.A.	2/24/2012-2/24/2013	NYCNA12-1436
Canadian Package Policy	Chubb	2/24/2012-2/24/2013	70212607
Directors & Officers Liability	XL Chartis Houston Casualty Navigators Arch Ace Argo Starr CNA	3/26/2012-3/26/2013	Numerous
Space Insurance	Aioi Nissay Dowa Asia Capital Re Atrium Axa Corp Brit Chaucer Global Hiscox Inter Hannover	11/15/2011-11/15/2012	Numerous

Type of Policy	Insurance Company	Term	Policy Number
	Kiln Liberty Mitsui Munich Re Partner Re Satec Sciemus Scor SpaceCo Starr Tokio Marine Torus Watkins XL		
Business Travel	Chubb	8/1/2011-8/1/2012	9906-34-85



**Exhibit B**

**Proposed Interim Order**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re:	)	
	)	Chapter 11
LIGHTSQUARED INC., <i>et al.</i> ,	)	
	)	Case No. 12-_____ (___)
	)	
Debtors. <sup>1</sup>	)	Joint Administration Requested
	)	

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**INTERIM ORDER (A) AUTHORIZING, BUT NOT DIRECTING,  
(I) CONTINUATION OF DEBTORS' INSURANCE POLICIES AND  
(II) PAYMENT OF CERTAIN OBLIGATIONS IN RESPECT THEREOF AND  
(B) AUTHORIZING AND DIRECTING FINANCIAL INSTITUTIONS TO HONOR ALL  
RELATED CHECKS AND ELECTRONIC PAYMENT REQUESTS**

Upon the motion (the "Motion")<sup>2</sup> of LightSquared Inc. and certain of its affiliates, as debtors and debtors in possession (collectively, the "Debtors") in the above-captioned chapter 11 cases (the "Chapter 11 Cases"), for entry of an order (the "Interim Order"), pursuant to sections 105(a), 363(b), 1107 and 1108 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as amended, the "Bankruptcy Code") and rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), (a) authorizing, but not directing, the Debtors, in their sole discretion, to (i) maintain and continue to honor certain insurance programs and policies (including the renewal of those policies and agreements due to expire during these Chapter 11 Cases) and (ii) pay certain obligations in respect thereof including, without

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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 or foreign tax or registration identification number, are: LightSquared Inc. (8845), LightSquared Investors Holdings Inc. (0984), One Dot Four Corp. (8806), One Dot Six Corp. (8763), SkyTerra Rollup LLC (N/A), SkyTerra Rollup Sub LLC (N/A), SkyTerra Investors LLC (N/A), TMI Communications Delaware, Limited Partnership (4456), LightSquared GP Inc. (6190), LightSquared LP (3801), ATC Technologies, LLC (3432), LightSquared Corp. (1361), LightSquared Finance Co. (6962), LightSquared Network LLC (1750), LightSquared Inc. of Virginia (9725), LightSquared Subsidiary LLC (9821), Lightsquared Bermuda Ltd. (7247), SkyTerra Holdings (Canada) Inc. (0631), SkyTerra (Canada) Inc. (0629) and One Dot Six TVCC Corp. (0040). The location of the debtors' corporate headquarters is 450 Park Avenue, Suite 2201, New York, NY 10022.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Motion or the Montagner Declaration, as applicable.

limitation, the payment of all premiums, premium financing payments, claims, deductibles, administrative expenses and all other charges and expenses incurred, on an uninterrupted basis, consistent with the Debtors' practices in effect prior to the commencement of the Debtors' Chapter 11 Cases, whether relating to the period prior to or after the commencement of these Chapter 11 Cases, (b) authorizing and directing financial institutions to receive, process, honor and pay all checks issued and electronic requests made relating to the foregoing and (c) scheduling a final hearing (the "Final Hearing") to consider entry of a final order (the "Final Order") granting the relief provided in the Interim Order on a permanent basis and the additional relief described in this Motion; and upon the Montagner Declaration; and it appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and it appearing that this proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and it appearing that venue of this proceeding and the Motion in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and notice of the Motion appearing adequate and appropriate under the circumstances; and the Court having found that no other or further notice is needed or necessary; and the Court having reviewed the Motion and the Montagner Declaration and having heard statements in support of the Motion at a hearing held before the Court (the "Hearing"); and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and it appearing, and the Court having found, that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors and other parties in interest; and any objections to the relief requested in the Motion having been withdrawn or overruled on the merits; and after due deliberation and sufficient cause appearing therefor, it is hereby **ORDERED** that:

1. The Motion is granted on an interim basis to the extent set forth herein.

2. The Debtors are authorized, but not required, in their sole discretion, to maintain, continue and renew the Insurance Programs on an uninterrupted basis and in accordance with the same practices and procedures as were in effect prior to the commencement of the Chapter 11 Cases.

3. The Debtors are authorized, but not directed, in their sole discretion, to pay any and all Insurance Obligations related to the Policies to the extent that the Debtors determine that such payments are necessary or appropriate, including those Insurance Obligations that were due and payable or related to the period before the commencement of these Chapter 11 Cases, without further notice or order of the Court. Notwithstanding the foregoing, the Debtors are not authorized to accelerate payments not otherwise due and payable before the Final Hearing.

4. The Debtors are authorized, but not directed, in their sole discretion, to revise, extend, supplement or change insurance coverage as needed, including entering into new insurance policies (*e.g.*, through renewal of the Policies or purchase of new policies).

5. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition Insurance Obligations approved herein are authorized and directed to receive, process, honor and pay all such checks and electronic payment requests when presented for payment (to the extent of funds on deposit), and that all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Interim Order.

6. The Debtors are authorized, but not directed, in their sole discretion, to issue new postpetition checks, or effect new funds transfers, on account of the Insurance Obligations, to replace any prepetition checks or electronic funds transfer requests issued that

may be lost or dishonored or rejected as a result of the commencement of these Chapter 11 Cases.

7. The banks and financial institutions subject to this Interim Order shall have no liability in connection with honoring any prepetition checks or funds transfer requests contemplated by this Interim Order.

8. Nothing in this Interim Order or any action taken by the Debtors in furtherance of the implementation hereof shall be deemed an assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code, and the Debtors' rights with respect to such matters are expressly reserved.

9. Nothing in the Motion or this Interim Order, nor the Debtors' payment of claims pursuant to this Interim Order, shall be construed as (a) an admission as to the validity of any claim against the Debtors, (b) a waiver or impairment of the Debtors' rights to contest the validity or amount of any claim on any grounds, (c) a promise to pay any claim or (d) an implication or admission by the Debtors that such claim is payable pursuant to this Interim Order.

10. Bankruptcy Rule 6003(b) has been satisfied because the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors.

11. Notwithstanding the possible applicability of Bankruptcy Rules 6004(a), 6004(h) or otherwise, the terms and conditions of this Interim Order shall be immediately effective and enforceable upon its entry.

12. The Final Hearing to consider entry of the Final Order is scheduled for \_\_\_\_\_, 2012 at \_\_\_\_\_.m. (prevailing Eastern time) before this Court. On or before \_\_\_\_\_, 2012, the Debtors shall serve, by United States mail, first-class postage prepaid,

notice of the entry of this Interim Order and of the Final Hearing (the "Final Hearing Notice"), together with copies of this Interim Order and the Motion, on: (a) the parties having been given notice of the Interim Hearing, (b) any party which has filed prior to such date a request for notices with this Court and (c) counsel to the official committee of unsecured creditors (the "Committee"). The Final Hearing Notice shall state that any party in interest objecting to the entry of the proposed Final order shall file written objections with the Clerk of Court no later than on \_\_\_\_\_, 2012 at 4:00 p.m. (prevailing Eastern time), which objections shall be served so as to be received on or before such date by: (a) LightSquared Inc., 450 Park Avenue, Suite 2201, New York, NY 10022, Attn: Marc R. Montagner and Curtis Lu, Esq., (b) proposed counsel to the Debtors, Milbank, Tweed, Hadley & McCloy LLP, One Chase Manhattan Plaza, New York, NY 10005, Attn: Matthew S. Barr, Esq. and Karen Gartenberg, Esq., (c) the Office of the United States Trustee for the Southern District of New York and (d) counsel to the Committee.

13. The Debtors are authorized and empowered to take all actions necessary to effectuate the relief granted pursuant to this Interim Order in accordance with the Motion.


14. The requirements set forth in Local Rule 9013-1(a) are satisfied.

15. The Court retains jurisdiction with respect to all matters arising from or related to the implementation and interpretation of this Interim Order.

New York, New York  
Date: \_\_\_\_\_, 2012

\_\_\_\_\_  
UNITED STATES BANKRUPTCY JUDGE

Exhibit "K" to the Affidavit of Elizabeth Creary,  
sworn before me this 1<sup>st</sup> day of June, 2012.

A handwritten signature in black ink, appearing to read 'Michael Colin Anderson', written over a horizontal line.

Commissioner for Taking Affidavits

Michael Colin Anderson,  
a Commissioner, etc., Province of  
Ontario, while a Student-at-Law.  
Expires May 8, 2015

Paul S. Aronzon (*pro hac vice* pending)  
Matthew S. Barr  
Steven Z. Szanzer  
Karen Gartenberg  
MILBANK, TWEED, HADLEY & M<sup>C</sup>CLOY LLP  
One Chase Manhattan Plaza  
New York, NY 10005-1413  
(212) 530-5000

*Proposed Counsel to Debtors and Debtors in Possession*

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

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In re:	)	
	)	Chapter 11
LIGHTSQUARED INC., <i>et al.</i> ,	)	
	)	Case No. 12- _____ ( )
Debtors. <sup>1</sup>	)	
	)	Joint Administration Requested

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**DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS  
(A) AUTHORIZING, BUT NOT DIRECTING, DEBTORS TO PAY TAXES AND FEES  
AND (B) AUTHORIZING AND DIRECTING FINANCIAL INSTITUTIONS TO HONOR  
ALL RELATED CHECKS AND ELECTRONIC PAYMENT REQUESTS**

LightSquared Inc. and certain of its affiliates, as debtors and debtors in possession (collectively, "LightSquared" or the "Debtors") in the above-captioned chapter 11 cases (the "Chapter 11 Cases"), file this motion (the "Motion") for entry of an order (the "Interim Order") (a) authorizing, but not directing, the Debtors to pay certain business, franchise, personal property, sales and use, goods and services, harmonized sales, excise and other taxes, as well as

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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 or foreign tax or registration identification number, are: LightSquared Inc. (8845), LightSquared Investors Holdings Inc. (0984), One Dot Four Corp. (8806), One Dot Six Corp. (8763), SkyTerra Rollup LLC (N/A), SkyTerra Rollup Sub LLC (N/A), SkyTerra Investors LLC (N/A), TMI Communications Delaware, Limited Partnership (4456), LightSquared GP Inc. (6190), LightSquared LP (3801), ATC Technologies, LLC (3432), LightSquared Corp. (1361), LightSquared Finance Co. (6962), LightSquared Network LLC (1750), LightSquared Inc. of Virginia (9725), LightSquared Subsidiary LLC (9821), Lightsquared Bermuda Ltd. (7247), SkyTerra Holdings (Canada) Inc. (0631), SkyTerra (Canada) Inc. (0629) and One Dot Six TVCC Corp. (0040). The location of the debtors' corporate headquarters is 450 Park Avenue, Suite 2201, New York, NY 10022.





certain annual reporting fees, FCC Fees and Canadian Regulatory Fees (each as defined below), (b) authorizing and directing financial institutions to receive, process, honor and pay all checks issued and electronic requests made relating to the foregoing and (c) scheduling a final hearing (the “Final Hearing”) to consider entry of a final order (the “Final Order”) granting the relief provided in the Interim Order on a permanent basis and the additional relief described in this Motion. In support of this Motion, the Debtors submit the Declaration of Marc R. Montagner, Chief Financial Officer and Interim Co-Chief Operating Officer of LightSquared Inc., (A) in Support of First Day Pleadings and (B) Pursuant to Rule 1007-2 of Local Bankruptcy Rules for United States Bankruptcy Court for Southern District of New York (the “Montagner Declaration”). In further support of this Motion, the Debtors respectfully state as follows:

### **Jurisdiction**

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).
2. Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The statutory bases for the relief requested herein are 105(a), 363(b), 507(a)(8), 541, 1107(a) and 1108 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as amended, the “Bankruptcy Code”) and Rules 1007(c), 6003, 6004, and 9006(b) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

### **Background**

#### **A. Introduction**

4. On May 14, 2012 (the “Petition Date”), each of the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

5. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Debtors have requested the joint administration of these Chapter 11 Cases for procedural purposes. No trustee, examiner or statutory committee of unsecured creditors has been appointed in these Chapter 11 Cases.

**B. Overview of Debtors' Businesses**

*(i) Debtors' Satellite Business*

6. LightSquared, a mobile communications company with headquarters in New York and incorporated in Delaware in 1985, is first private company to offer mobile satellite services throughout North America, initially using two geostationary satellites<sup>2</sup> as well as a portion of the electromagnetic spectrum known as the L-Band. Since its first satellite became operational in 1996, LightSquared has provided satellite communications services – which include data, voice, fax and dispatch services – to companies and federal, state, provincial, local and foreign governments that are wholesale purchasers of bandwidth power and capacity, resellers of telephony, data and dispatch services and retail voice users. For example, LightSquared provides services to public safety officers, emergency responders and the United States military. Today, LightSquared's mobile satellite business generates approximately \$30 million in annual revenue and provides service to approximately 300,000 end users.

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<sup>2</sup> These two first-generation satellites, known as MSAT-1 and MSAT-2, currently provide services to some existing customers, and have also, since March 10, 2012, provided emergency back-up service to all of LightSquared's customers due to a solar flare(s), which temporarily disabled the SkyTerra-1 satellite, one of LightSquared's two next-generation satellites. LightSquared is currently finalizing the assessment of the solar flare(s) prior to transitioning customers back to that satellite for service. LightSquared will also rely upon the MSAT system until such time that SkyTerra-2, LightSquared's second next-generation satellite, is launched. Both MSAT-1 and MSAT-2 are approaching the ends of their useful lives and are part of the Prepetition LP Collateral (as defined below). They have, in the past, experienced anomalies and Solid State Power Amplifier failures and neither currently operates at full capacity.

7. LightSquared launched SkyTerra-1 in November 2010, which, as mentioned above, is one of two next-generation satellites that have been constructed by LightSquared. LightSquared's next-generation satellites are two of the most powerful mobile satellites ever constructed. Each is equipped with a 22 meter (75 foot) diameter antenna which provides ten (10) times better performance than that provided by LightSquared's prior satellites. The satellites have the capability of forming up to five hundred (500) beams over North America and can operate with devices that are as small as standard cell phones or USB modems. The SkyTerra-1 and SkyTerra-2 satellite networks utilize state-of-the art ground-based beam forming systems. Such systems allow flexibility in beam shapes, number, bandwidth allocation and beam power allocation, which is unprecedented in prior mobile satellite systems. SkyTerra-1 is fully operational, and SkyTerra-2 is constructed and stored in preparation for launch.

8. LightSquared currently operates three (3) lines of business, including Mobile Satellite Communications ("MSAT"), Mobile Data Services ("MDS") and Private Network Carriers ("PNC") through a wholesale business model whereby its partners bill the end users, and LightSquared bills its partners at a wholesale rate. Through these three lines of business, LightSquared has over fifteen wholesale partners, including, but not limited to, Comtech Mobile Datacom Corporation, XATA Corporation, SkyBitz, Outerlink, Omnistar, Wireless Matrix, EMS Technologies/Honeywell, Network Innovations, Glentel, Astrum, Infosat, Inmosat and International Satellite Service, that collectively support approximately 300,000 subscribers across several markets throughout North America.

9. MSAT Business. LightSquared's MSAT business provides circuit-switched voice, low data rate services and push-to-talk ("PTT") services, which are sold through LightSquared's authorized wholesale service providers and are utilized by a variety of

governmental agencies at the federal, state and local level, as well as by various markets in the enterprise space. LightSquared is currently the only commercial satellite operator in North America offering PTT service. LightSquared's two-way, PTT radio service over satellite is a popular option for communications in remote areas or during emergency situations, and its dispatch or two-way radio style is familiar to the public safety community and ideal for command and control. Thus, in the public/government sector, LightSquared's MSAT business serves end users in public safety, emergency management and defense as well as health and education.

10. Specifically, LightSquared's PTT products and services were utilized by public safety and education (such as the University of North Carolina Wilmington) end users during, and in preparation for, several disasters, including Hurricane Katrina (Mississippi Department of Wildlife, Fisheries and Parks), Hurricane Gustav (several federal, state and local agencies), Hurricane Irene (DE State Police, MD Emergency Management Agency), Kentucky Ice Storms (Kentucky Department for Public Health) and, most recently, the tornadoes in Kentucky (Kentucky Department for Public Health). In all of these disasters, LightSquared's mobile satellite service, with its PTT capability, provided instant communications for public safety agencies and a means for interoperability among disparate agencies.

11. Moreover, in recent years, the United States has faced a variety of costly natural and man-made disasters, including hurricanes, tornadoes, wildfires, flooding and earthquakes, as well as the 9/11 terrorist attacks, which have amplified the need for dependable communications that enable organizations to communicate with each other. Often, the only means available to the public safety/emergency responder community to do so is through mobile satellite communications. To address these needs, federal, state and local agencies have voluntarily banded together with LightSquared in a public-private partnership to create the Satellite Mutual Aid Radio

Talkgroup (“SMART”) program – enabling nationwide and regional interoperability at no additional cost to LightSquared users. Since SMART is a feature provided at no cost to LightSquared’s public safety end users, the SMART program, incorporating such SMART feature, is a cost-efficient program that delivers measurable return on investment – swift and reliable communications interoperability for emergency response and contingency operations. With the rapid growth of SMART, public safety and emergency responders have a resource that enables communications interoperability that is immediate, reliable and always available.

12. It is thus no surprise that the nationwide and regional SMART end users include, among others, (a) JSMART, utilized by public safety agencies across the country and managed by the DOJ Wireless Management, (b) LSMART, utilized nationally by law enforcement and managed by the U.S. Marshals Service, (c) USMART, utilized by urban search and rescue teams across the United States and managed by the Montgomery County, Maryland Fire & Rescue Service, (d) NE SMART, utilized by the northeast states and managed by the Connecticut State Police, (e) WSMART, utilized by the western states and managed by the California Emergency Management Agency and (f) MWSMART, utilized by the midwest states and managed by the Indiana Department of Homeland Security.

13. The MSAT line of business also serves various markets in the enterprise space, including maritime, oil and gas, utilities, transportation, media and recreation. In the maritime vertical market, especially in Alaska, fishermen rely on LightSquared’s PTT capability while at sea in extreme environments, especially north of 60° toward the Aleutians. Additionally, enterprise users in the oil and gas industry rely on LightSquared’s mobile satellite service in the Gulf region to communicate with workboats and on oil rigs/platforms for instantaneous communication between rigs/boats and back to operations centers on the coast.

14. MDS Business. LightSquared's second line of business, MDS, is a low data rate service offering used primarily for applications such as fleet and load management, email, vehicle tracking, two-way messaging and broadcast messaging. Like LightSquared's MSAT services, MDS is sold through LightSquared's authorized wholesale service providers and is utilized by various end users. One such end user, the New Mexico State Police, utilizes MDS in police cruisers to enable officers to perform database lookups on ruggedized laptops in remote areas where no terrestrial communications exist and LightSquared's satellite service is the only means by which to meet this critical data communications requirement in an effective manner.

15. PNC Business. Finally, LightSquared's third line of business, PNC, enables customers to lease bandwidth from LightSquared over which they offer custom satellite data solutions (typically, asset tracking services for truck and rail) to a wide variety of end users. In connection therewith, LightSquared's PNC customers are responsible for developing a custom air interface, providing hub, end-user equipment and servicing end users. One of LightSquared's largest PNC customers, SkyBitz, provides asset tracking services through LightSquared's satellite capacity for Tri State Motor Transit Co., an end user that hauls high-risk cargo such as munitions, explosives and nuclear fuel bound for sites from coast to coast. LightSquared's satellite capacity ensures that trailers hauling this cargo are constantly tracked where terrestrial communications do not exist. Another PNC customer, Comtech Mobile Datacom Corp., provides service to the United States military, utilizing LightSquared's service in North America in connection with the Blue Force Tracking system that tracks all military assets.

(ii) *Debtors' Terrestrial Component of Satellite Business*

16. In the late 1990s, LightSquared determined that adding a terrestrial (*i.e.*, land-based) component to its satellite system would optimize the use of the L-Band and provide

a communications system with superior reliability and coverage. By combining a nationwide system of terrestrial base stations with one of the largest commercial satellites ever launched – the state-of-the-art SkyTerra-1 – LightSquared could offer coverage of a satellite system in North America and the capacity of a next-generation, high-speed wireless broadband network.

17. LightSquared determined that a significant market opportunity was created for a wholesale-only, 4th Generation Long Term Evolution (“4G LTE”) wireless broadband network due to, among other things, (a) the proliferation of new mobile devices, such as smartphones and tablets, which accelerated demand for ubiquitous, on-the-go data-rich Internet services, (b) limited wireless network capacity available to support increased data usage and (c) substantial costs and barriers to entry preventing smaller carriers and new operators from deploying nationwide 4G LTE networks. LightSquared believed that many wireless operators would face significant challenges meeting network demands due to spectrum availability and capital shortages because the wireless communications industry was (and currently remains) dominated by a small number of established, national wireless carriers and current levels of data transmission already utilized significant network capacity. This led LightSquared to conclude that some carriers would be unable to deploy their own 4G LTE networks in a timely and cost-effective manner, while others would be unable to install enough capacity to serve the needs of their existing customer bases, thereby resulting in such carriers being unable to offer comparable service quality and speeds on a cost-competitive basis with the largest national carriers. To address this imbalance, LightSquared’s strategy was, and currently remains, to enable a broad range of potential wholesale customers to launch competitive retail wireless service offerings using wholesale capacity on LightSquared’s 4G LTE network.

18. Accordingly, LightSquared initiated the process of building the only 4G LTE open wireless broadband network that incorporates both terrestrial (*i.e.*, land-based) and satellite coverage throughout North America and offers people the speed, value and reliability of universal connectivity, wherever they may be located. The satellite component of the system would provide service to the population in areas not otherwise covered by terrestrial systems. Through its wholesale-only business model, entities without their own wireless network, or that have limited geographic coverage or spectrum, will be able to market and sell their own devices, applications and services using the LightSquared network at a competitive price and without retail competition from LightSquared. This, in turn, will enable manufacturers and retailers to provide a solution for consumers, while creating new customer relationships and ongoing revenue streams for themselves. LightSquared's partners will also be able to develop their own devices, applications and services on the LightSquared network because it is a completely open network system.

19. As of the Petition Date, the Debtors employed approximately 168 people in the United States and Canada. As of February 29, 2012, the Debtors had approximately \$4.48 billion in assets (book value) and \$2.29 billion in liabilities.

**C. Additional Information**

20. Additional information regarding the Debtors' businesses, assets, capital structure and the circumstances leading to the filing of these Chapter 11 Cases is set forth in the Montagner Declaration, which was filed contemporaneously herewith.

**Taxes and Fees**

21. In the ordinary course of their businesses, the Debtors (a) collect, incur and/or comply with a variety of taxes or tax obligations, including certain business, corporation, franchise, partnership, personal property, provincial, capital, non-resident withholding, sales and



use, goods and services, harmonized sales, excise and other taxes<sup>3</sup> (collectively, the “Taxes”), (b) charge certain annual reporting fees, Federal Communications Commission (“FCC”) fees and Canadian Regulatory Fees, and other similar charges and assessments (collectively, the “Fees”) on behalf of various taxing, licensing and other regulatory authorities (collectively, the “Authorities”) listed on Exhibit A<sup>4</sup> hereto and (c) pay Fees to such Authorities for licenses and permits required to conduct the Debtors’ businesses in the ordinary course. The Debtors pay the Taxes and Fees monthly, quarterly or annually to the respective Authorities, in each case as required by applicable laws and regulations.<sup>5</sup> The Debtors estimate that, as of the Petition Date, they have collected and/or incurred approximately \$1,000,000 in aggregate Taxes and Fees, which were not currently due and owing as of the Petition Date.<sup>6</sup>

22. The Debtors’ failure to pay the Taxes and Fees could materially and adversely impact the Debtors’ business operations in several ways. The Authorities may initiate audits of the Debtors, which would unnecessarily divert the Debtors’ attention from the tasks required by the reorganization process at a critical time for the Debtors’ businesses. The Authorities may also attempt to suspend the Debtors’ operations, file liens, seek to lift the automatic stay and pursue other remedies that will be administratively burdensome to the

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<sup>3</sup> The Debtors do not seek authority to collect and pay state and federal employee withholding taxes under this Motion but rather request such authority as part of the Debtors’ Motion for Entry of Interim and Final Orders (A) Authorizing, but not Directing, Debtors (I) To Pay Certain Prepetition Wages and Reimbursable Employee Expenses, (II) To Pay and Honor Employee Medical and Other Benefits and (III) To Continue Employee Benefits Programs and (B) Authorizing Financial Institutions to Honor All Related Checks and Electronic Payment Requests, filed concurrently herewith.

<sup>4</sup> Exhibit A contains a non-exclusive list of Authorities and the Taxes and Fees that the Debtors collect and/or incur on behalf of each of the Authorities. The relief requested in this Motion applies to all Authorities for which the Debtors collect and/or incur Taxes and Fees and is not limited solely to those Authorities included in Exhibit A.

<sup>5</sup> Some of the Taxes and Fees are “trust fund” taxes that the Debtors have collected and hold in trust for the benefit of the Authorities. Therefore, such funds do not constitute “property of the estate” as discussed below and could not otherwise be used by the Debtors’ estates.

<sup>6</sup> Notwithstanding the foregoing, the Debtors reserve their rights to contest the amount of any Taxes and Fees on any grounds they deem appropriate.

Debtors' estates. Furthermore, certain directors and officers could be subject to personal liability, which would likely distract those key personnel from their duties related to the Debtors' restructuring efforts. Moreover, with respect to the Fees, the Debtors' failure to pay such Fees to the Authorities and other relevant third parties would cause the Debtors to incur late fees, penalties and other charges in addition to the Fees.

**A. State Use Taxes**

23. In the ordinary course of business, the Debtors purchase equipment necessary to the Debtors' business operations. In lieu of the Debtors paying or incurring sales or excise taxes in connection with these purchases, applicable state taxing authorities require the Debtors to pay use taxes on the equipment. The Debtors have paid use taxes in the past to certain of the Authorities periodically in connection with their initial growth strategy. Given the current hiatus in the growth of the Debtors' businesses, additional equipment purchases may not be necessary. As a result, the Debtors expect to incur *de minimis* future use taxes. The Debtors estimate that, as of the Petition Date, they have *de minimis* amounts below \$1,000 in the aggregate owing for accrued, unpaid prepetition use taxes.

**B. State Property Taxes**

24. Under applicable law, state and local governments in jurisdictions where the Debtors' operations are located (including New York, Virginia, California, Maryland, Texas, Ontario and Saskatchewan) are granted the authority to levy property taxes against real and personal property.<sup>7</sup> The Debtors generally do not own real property but have historically paid approximately \$15,000 per year in property taxes on their personal property in the ordinary course of business as such taxes are invoiced. The Debtors recently took possession of certain

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<sup>7</sup> Over time, the Debtors have acquired leasehold interests in real property in various jurisdictions and own certain structures located on such real property. As a result, pursuant to the relevant state tax law, the Debtors incurred certain state property tax liabilities associated therewith.

satellite network ground stations and other equipment for the initiation of their 4G LTE network, for which they may owe property taxes; however, the Debtors have no history of owing these tax liabilities. The Debtors estimate that, as of the Petition Date, they have paid approximately \$6,500 in accrued, unpaid property taxes due in the first quarter of 2012 and that \$8,500 may come due in the second quarter of 2012.

**C. Business Taxes and Annual Reporting Fees**

25. Certain states require the Debtors to pay various business taxes, which may be based on gross receipts or other bases determined by the taxing jurisdiction. Further, certain states require the Debtors to pay annual reporting fees to state governments to remain in good standing for purposes of conducting business within the state. The Debtors pay approximately \$100,000 per year with respect to these various business taxes and annual reporting fees. The Debtors estimate that, as of the Petition Date, there is approximately \$100,000 owing to the various Authorities with respect to prepetition business taxes and annual reporting fees. The Debtors acknowledge that if any amounts are owed, some of these business taxes and annual reporting fees may, under applicable law, be entitled to a priority claim.

**D. Franchise Taxes**

26. The Debtors pay franchise taxes to various states to operate their businesses in those states. Specifically, in addition to Delaware, the Debtors file franchise taxes with California, New York, Tennessee, Texas and Utah.<sup>8</sup> The Debtors' franchise taxes are generally paid on an annual basis, in the approximate amount of \$207,500 per year. Of that amount, approximately \$200,000 is paid to Delaware. The Debtors estimate that, as of the Petition Date, they have no accrued and unpaid 2012 franchise taxes but that they have

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<sup>8</sup> Over time, the Debtors have expanded their operations, become chartered in various jurisdictions and, in certain cases, established operational footprints. As a result, pursuant to the relevant state tax law, the Debtors incurred certain state franchise tax liabilities associated therewith.

approximately \$72,000 in accrued, unpaid Delaware franchise taxes that will come due in the second quarter of 2012.

**E. Canadian Taxes**

27. In connection with the operation of their Canadian affiliates, the Debtors are responsible for paying Canadian corporation, non-resident withholding, goods and services, retail sales, harmonized sales, provincial and capital taxes each year (the “Canadian Taxes”).<sup>9</sup> The amount of Canadian Taxes that the Debtors incur varies from year to year. In 2011, the Debtors paid approximately CDN\$375,000 (net) in Canadian Taxes, primarily in respect of applicable provincial sales tax. Due to recent reduced activity and financial losses, the Debtors expect a *de minimis* amount of net Canadian taxes to become due postpetition.

**F. FCC and Canadian Regulatory Fees**

28. Section 9 of the Communications Act of 1934 empowers the FCC to “assess and collect regulatory fees to recover the costs of . . . enforcement activities, policy and rulemaking activities, user information services, and international activities.” 47 U.S.C. § 159(a)(1). As a satellite communications company, the Debtors are subject to regulation and oversight by the FCC and, as such, incur “regulatory fees” in the ordinary course of business, including, but not limited to, Telecommunications Relay Services Fund charges and Universal Service Fund charges. Further, in the ordinary course of business, the Debtors incur regulatory fees in connection with the operation of their MSAT-2 and SkyTerra-1 satellites and their U.S.-based satellite earth stations in Alaska, California, Texas and Virginia (the foregoing, collectively, the “FCC Fees”). The Debtors’ annual FCC Fees are approximately \$133,000 and

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<sup>9</sup> All references to the Canadian Taxes and Canadian Regulatory Fees paid by the Debtors are listed in Canadian dollars. All other Taxes and Fees referenced in this Motion are listed in U.S. dollars.

are due in September 2012. The Debtors estimate that, as of the Petition Date, they have approximately \$89,000 in accrued prepetition FCC Fees that will come due in September 2012.

29. In addition to the FCC Fees, the Debtors, in the ordinary course of business, incur certain Canadian regulatory fees (the “Canadian Regulatory Fees”) in connection with the operation of the MSAT-1 satellite at the 106.5 West Longitude orbital location, the use of radio spectrum in connection with the MSAT-1, MSAT-2 and SkyTerra-1 satellites and the operation of various earth station facilities located in the provinces of Alberta, Newfoundland, Ontario and Saskatchewan. The Canadian Regulatory Fees also include fees that are imposed on the Debtors pursuant to their licenses and registrations with the Canadian Radio-Television and Telecommunications Commission (“CRTC”). The Canadian Regulatory Fees are payable to the Canadian government on an annual basis. The Canadian Regulatory Fees also include mobile satellite service license fees, radio license fees and spectrum fees. The Debtors paid CDN\$42,480 in accrued prepetition Canadian Regulatory Fees on March 31, 2012, and no additional amounts are expected to come due in 2012.

#### **Relief Requested**

30. By this Motion, the Debtors respectfully request entry of the Interim Order and Final Order, pursuant to sections 105(a), 363(b), 507(a)(8), 541, 1107(a) and 1108 of the Bankruptcy Code, (a) authorizing, but not directing, the Debtors to pay certain business, corporate, franchise, partnership, personal property, provincial, capital, non-resident withholding, sales and use, goods and services, harmonized sales, excise and other taxes, as well as certain annual reporting fees, FCC Fees and Canadian Regulatory Fees that become due and payable in the period between the Petition Date and the date of the Final Hearing (the “Interim Period”), and (b) authorizing and directing financial institutions to receive, process, honor and pay all checks issued and electronic requests made relating to the foregoing. Moreover, while

the Debtors believe that the majority of such amounts are likely *de minimis*, out of an abundance of caution, the Debtors respectfully request interim and final authority to continue to honor and pay all prepetition claims arising from the Taxes and Fees, and obligations related thereto, as they may be modified, amended or supplemented from time to time in the ordinary course.

### **Basis for Relief**

#### **A. Certain Taxes and Fees May Not Be Property of Debtors' Estates**

31. Section 541(d) of the Bankruptcy Code provides, in relevant part, that “[p]roperty in which the debtor holds, as of the commencement of the case, only legal title and not an equitable interest . . . becomes property of the estate under subsection (a)(1) or (2) of this section only to the extent of the debtor’s legal title to such property, but not to the extent of any equitable interest in such property that the debtor does not hold.” 11 U.S.C. § 541(d).

32. Certain of the Taxes and Fees may constitute “trust fund” taxes, which the Debtors are required to collect from their customers and hold in trust for payment to the Authorities. As a result, courts have held that such taxes are not part of a debtor’s estate under section 541(d) of the Bankruptcy Code. See, e.g., Begier v. Internal Revenue Serv., 496 U.S. 53, 57-60 (1990) (holding that any prepetition payment of trust fund taxes is not a transfer subject to avoidance because such funds are not debtor’s property); Shank v. Wash. State Dept. of Revenue (In re Shank), 792 F.2d 829, 833 (9th Cir. 1986) (sales tax required by state law to be collected by sellers from their customers is a “trust fund” tax and not released by bankruptcy discharge); DeChiaro v. N.Y. State Tax Comm’n, 760 F.2d 432, 435-36 (2d Cir. 1985) (same). Accordingly, the Debtors generally do not have an equitable interest in funds held on account of such “trust fund” taxes and, therefore, the Debtors should be permitted to pay those funds to the Authorities as they become due.

33. Additionally, a constructive trust may be imposed on collected taxes where there exists a reasonable nexus between the funds and the taxes in question. See In re Integrated Health Servs., Inc., 344 B.R. 262, 270 (Bankr. D. Del. 2006). The Debtors, therefore, may not have a legally cognizable interest in funds held on account of such “trust fund” taxes and, accordingly, such taxes, which generally consist of sales taxes, would not constitute “property of the [Debtors’] estate[s]” as such term is defined in section 541 of the Bankruptcy Code. Accordingly, the Debtors should be permitted to pay such funds to the Authorities as they become due.

**B. Certain of the Taxes and Fees May Constitute Secured or Priority Claims Entitled to Special Treatment**

34. Payment of certain of the Taxes and Fees likely will give the Authorities no more than what they otherwise would be entitled to receive under a chapter 11 plan. In fact, such payment at this time will save the Debtors interest expense, legal expense and penalties that otherwise might accrue on the Taxes during these Chapter 11 Cases.

35. Claims for some or all of the use taxes owed by the Debtors are or may be entitled to priority status under section 507(a)(8) of the Bankruptcy Code. Section 507(a)(8) of the Bankruptcy Code provides that claims entitled to priority status include unsecured claims of governmental units for (a) taxes on or measured by income or gross receipts for a taxable year ending on or prior to the Petition Date, for which a return, if required, is last due after three years prior to the Petition Date, and which is assessed within 240 days before the Petition Date (see 11 U.S.C. § 507(a)(8)(A)), (b) property taxes incurred prior to the Petition Date and last payable without penalty after one year prior to the Petition Date (see 11 U.S.C. § 507(a)(8)(B)), and (c) taxes required to be collected or withheld and for which the Debtor is liable in whatever capacity (see 11 U.S.C. § 507(a)(8)(C)). Moreover, to the extent that the Taxes and Fees are

entitled to priority treatment under section 507(a)(8)(B) of the Bankruptcy Code, the governmental unit also may attempt to assess penalties. See 11 U.S.C. § 507(a)(8)(G) (granting eighth priority status to “a penalty related to a claim of a kind specified in this paragraph and in compensation for actual pecuniary loss”).

36. In addition, certain of the Taxes and Fees may be the subject of tax liens. Arguably, the relation back of a tax lien to the assessment or tax status date generally does not affect the enforceability of the tax lien against a debtor or violate the automatic stay imposed by section 362(a) of the Bankruptcy Code. See 11 U.S.C. § 362(b)(3). In fact, the creation and perfection of such a lien may not violate the automatic stay. See 11 U.S.C. § 362(b)(18) (automatic stay does not apply to “the creation or perfection of a statutory lien for an ad valorem property tax, or a special tax or special assessment on real property whether or not ad valorem, imposed by a governmental unit, if such tax or assessment comes due after the date of the filing of the petition.”); see also 3 Alan N. Resnick & Henry J. Sommer, COLLIER ON BANKRUPTCY ¶ 362.05[17] (15TH REV. ED.) (section 362(b)(18) of Bankruptcy Code reversed case law that had held that creation of statutory lien for ad valorem property taxes violated automatic stay). Thus, the Debtors’ failure to pay their property taxes, for example, may increase the scope of priority claims asserted against the Debtors’ estates.

37. Indeed, absent the granting of the relief requested herein, many Authorities may hold oversecured claims against the Debtors’ estates related to the Taxes and Fees. The Bankruptcy Code provides that oversecured claims accrue interest during the pendency of a chapter 11 case. See 11 U.S.C. § 506(b); United States v. Ron Pair Enters., Inc., 489 U.S. 235, 241-43 (1989) (nonconsensual lienholders may receive interest on their claims under section 506(b) of Bankruptcy Code). If the Debtors are required to pay interest on such



tax claims, section 511 of the Bankruptcy Code provides that “the rate of interest shall be the rate determined under applicable nonbankruptcy law,” which rate may exceed prevailing market interest rates by a considerable degree. See 11 U.S.C. § 511(a). Accordingly, prompt payment of the Taxes and Fees may eliminate claims for interest at these high rates for any secured claims.

38. In addition, claims entitled to priority status pursuant to section 507(a)(8) of the Bankruptcy Code must be paid in full pursuant to a confirmable plan of reorganization under section 1129(a)(9)(c) of the Bankruptcy Code. Thus, payment of the Taxes and Fees at this time only affects the timing of the payment for the vast majority of the amounts at issue and, therefore, should not unduly prejudice the rights of other creditors.

**C. Non-Payment of Taxes and Fees May Result in Attachment of Liens, Accrual of Interest and Disruption of Operations**

39. Payment of prepetition personal and real property taxes, and the franchise taxes, and other governmental assessments are necessary for several reasons. Generally, unpaid personal property or real property taxes are secured by a lien on the property subject to the tax. Under applicable state law, property tax liens typically have priority over any other liens asserted against the property. Moreover, if property taxes are not paid, interest accrues, sometimes at high rates. Paying prepetition property taxes now will prevent disruption to the Debtors’ operations by avoiding the imposition of liens and the accrual of interest charges on such claims, without prejudicing the rights of any other creditors or parties in interest. Similarly, the Debtors are required to pay the franchise taxes and other governmental assessments in order to operate their businesses in the jurisdictions where these taxes apply. If the Debtors do not pay these taxes, notwithstanding the prohibition against discrimination contained in section 525 of the

Bankruptcy Code, the Authorities may seek to prevent the Debtors from continuing operations in their respective jurisdictions, thereby disrupting the Debtors' operations.

**D. Payment of Taxes and Fees May Eliminate Unnecessary Distractions from Reorganization Efforts**

40. If the Debtors fail to pay the Taxes and Fees in a timely manner, the Authorities may assert that the Debtors' directors and officers are personally liable for payment of the Taxes and Fees. This is the case even if the failure to pay such Taxes and Fees was not a result of malfeasance on the part of the directors and officers. Any litigation related to the failure to pay Taxes and Fees would prove distracting for the Debtors, their named directors and officers, as well as this Court, which may be asked to entertain various motions seeking injunctions relating to potential court actions. As such, it is in the best interest of the Debtors' estates to eliminate the possibility of these distractions and to enable the Debtors to continue operating without interruption.

**E. Ample Authority Exists To Support Payment of Taxes and Fees**

41. The Debtors submit that payment of the Taxes and Fees is critical to the Debtors' continued, uninterrupted operations and, as such, is necessary and appropriate and may be authorized under sections 105(a), 363(b) 1107(a) and 1108 of the Bankruptcy Code, and pursuant to the "doctrine of necessity."

*(i) Court May Rely on Section 363(b) of Bankruptcy Code To Grant Motion*

42. The Court may authorize the Debtors to pay the Taxes and Fees arising or relating to the period before the Petition Date pursuant to section 363(b) of the Bankruptcy Code. See In re Ionosphere Clubs, Inc., 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (authorizing payment of certain prepetition obligations under section 363(b)). Section 363(b) of the Bankruptcy Code provides that "the trustee, after notice and a hearing, may use, sell, or lease, other than in the

ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). To approve the use of a debtor’s assets outside the ordinary course of business pursuant to section 363(b) of the Bankruptcy Code, the Court must find that a “good business reason” exists for the use of such assets. See, e.g., Official Comm. of Unsecured Creditors v. Enron Corp. (In re Enron Corp.), 335 B.R. 22, 27-28 (S.D.N.Y. 2005) (quoting In re Lionel Corp., 722 F.2d 1063, 1071 (2d Cir. 1983)).

43. The business judgment rule is satisfied where “the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company.” Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.), 147 B.R. 650, 656 (S.D.N.Y. 1992) (quoting Smith v. Van Gorkom, 488 A.2d 858, 872 (Del. 1985)), appeal dismissed, 3 F.3d 49 (2d Cir. 1993). “Where the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.” Comm. of Asbestos-Related Litigants v. Johns-Manville Corp. (In re Johns-Manville Corp.), 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986). Courts in this district consistently have declined to interfere with corporate decisions absent a showing of bad faith, self-interest or gross negligence, and have upheld a board’s decisions as long as such decisions are attributable to any “rational business purpose.” Integrated, 147 B.R. at 656 (quoting CRTE Corp. v. Federated Dep’t Stores, 683 F. Supp. 422, 436 (S.D.N.Y. 1988)). As discussed more fully herein, the Debtors’ requests to pay the Taxes and Fees meet this standard because the failure to pay the Taxes and Fees could have a material adverse impact on the day-to-day operations of the Debtors’ businesses.

(ii) *Court May Rely on Its General Equitable Powers To Grant Motion*

44. In addition, to supplement this explicit statutory power, the Court may authorize payment of prepetition claims in appropriate circumstances based on section 105(a) of the Bankruptcy Code. Section 105(a) of the Bankruptcy Code, which codifies the inherent equitable powers of the bankruptcy court, empowers the Court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Under section 105(a) of the Bankruptcy Code, courts may permit payments on account of prepetition obligations outside the context of a chapter 11 plan when such obligations are essential to the continued operation of a debtor’s business. See, e.g., In re Just For Feet, Inc., 242 B.R. 821, 824 (Bankr. D. Del. 1999) (acknowledging that “[c]ertain pre-petition claims . . . may need to be paid to facilitate a successful reorganization” and that “[s]ection 105(a) of the [Bankruptcy] Code provides a statutory basis for the payment of pre-petition claims”); Ionosphere Clubs, 98 B.R. at 175 (“The ability of a Bankruptcy Court to authorize the payment of pre-petition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept.”).

45. This flexible approach is particularly critical where a prepetition creditor provides vital goods or services to a debtor that would be unavailable if the debtor did not satisfy its prepetition obligations. In In re Structurlite Plastics Corp., 86 B.R. 922, 931 (Bankr. S.D. Ohio 1988), the bankruptcy court stated that “a bankruptcy court may exercise its equity powers under §105(a) [of the Bankruptcy Code] to authorize payment of pre-petition claims where such payment is necessary ‘to permit the greatest likelihood of survival of the debtor and payment of creditors in full or at least proportionately.’” (citation omitted) The court explained that “a *per se* rule proscribing the payment of pre-petition indebtedness may well be too inflexible to permit the effectuation of the rehabilitative purposes of the Code.” Id. at 932.

46. Payment of the Debtors' Taxes and Fees is imperative to the Debtors' continued operation and ability to restructure. The Debtors' failure to pay the Taxes and Fees could materially and adversely impact the Debtors' business operations in several ways. The Authorities may initiate audits of the Debtors, which would unnecessarily divert the Debtors' attention from the tasks required by the reorganization process at a critical time for the Debtors' businesses. The Authorities may also attempt to suspend the Debtors' operations, file liens, seek to lift the automatic stay and pursue other remedies that will be administratively burdensome to the Debtors' estates. Furthermore, certain directors and officers could be subject to personal liability, which would likely distract those key personnel from their duties related to the Debtors' restructuring efforts. Moreover, with respect to the Fees, the Debtors' failure to pay such Fees to the Authorities and other relevant third parties may cause the Debtors to incur late fees, penalties and other charges in addition to the Fees. Accordingly, the payment of the Taxes and Fees is essential to ensure that the value of the Debtors' estates is maintained and that the Debtors can focus on their restructuring efforts. Therefore, the Court should exercise its equitable power to grant the relief requested in this Motion.

(iii) *Court May Rely on "Necessity of Payment" Doctrine To Grant Motion*

47. The "doctrine of necessity" or the "necessity of payment" doctrine functions in a chapter 11 case as a mechanism by which the bankruptcy court can exercise its equitable power to allow payment of critical prepetition claims not explicitly authorized by the Bankruptcy Code and further supports the relief requested herein. See In re Lehigh & New England Ry. Co., 657 F.2d 570, 581 (3d Cir. 1981) (holding that a court may authorize payment of prepetition claims if such payment is essential to continued operation of debtor); Dudley v. Mealey, 147 F.2d 268, 271 (2d Cir. 1945) (holding, in a hotel reorganization case, that court was

not “helpless” to apply rule to supply creditors of non-railroad debtors where alternative was cessation of operations).

48. Preservation of the estate is often most critical and extremely difficult early in reorganization cases. For that reason, where failure to make payments of certain essential prepetition claims threatens to disrupt a debtor’s efforts to reorganize, bankruptcy courts routinely invoke their equitable powers to authorize a debtor to pay such claims under the doctrine of necessity, in light of the paramount goal of chapter 11 – “facilitating the continued operation and rehabilitation of the debtor . . . .” Ionosphere Clubs, 98 B.R. at 176; see also In re Eagle-Picher Indus., Inc., 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) (authorizing payment of prepetition claims as “necessary to avert a serious threat to the [c]hapter 11 process”).

49. The nature of the Debtors’ business and the extent of its operations make it essential for the Debtors to pay the Taxes and Fees on an uninterrupted basis. Absent the relief requested herein, the Debtors’ business could be significantly disrupted. As discussed more fully herein, the Debtors could incur penalties and liens arising from their failure to pay the Taxes and Fees, thereby increasing unnecessarily both the value and priority of claims against their estates – all to the detriment of the Debtors and their stakeholders. Moreover, the Debtors’ key personnel could also be exposed to personal liability and needless distraction from the present reorganization efforts. Accordingly, granting the relief requested in this Motion will enhance the likelihood of the Debtors’ successful rehabilitation, maximize the value of the Debtors’ assets and benefit the Debtors’ estates and their creditors.

(iv) *Payment of Taxes and Fees Is Valid Exercise of Debtors’ Fiduciary Duties Pursuant to Bankruptcy Code Sections 1107(a) and 1108*

50. Pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, debtors in possession are fiduciaries “holding the bankruptcy estate[s] and operating the business[es] for the

benefit of [their] creditors and (if the value justifies) equity owners.” In re CoServ, L.L.C., 273 B. R. 487, 497 (Bankr. N.D. Tex. 2002); see also Unofficial Comm. of Equity Holders v. McManigle (In re Penick Pharm., Inc.), 227 B.R. 229, 232-33 (Bankr. S.D.N.Y. 1998) (“upon filing its petition, the Debtor became debtor in possession and, through its management . . . was burdened with the duties and responsibilities of a bankruptcy trustee”). Implicit in the fiduciary duties of any debtor in possession is the obligation to “protect and preserve the estate, including an operating business’s going-concern value.” Id. Some courts have noted that there are instances in which a debtor can fulfill this fiduciary duty “only . . . by the preplan satisfaction of a prepetition claim.” Id. The CoServ court specifically noted that the preplan satisfaction of prepetition claims would be a valid exercise of the debtor’s fiduciary duty when the payment “is the only means to effect a substantial enhancement of the estate . . . .” and also when the payment was to “sole suppliers of a given product.” 274 B.R. at 498.

51. Paying the Taxes and Fees will benefit the Debtors’ estates and their creditors by allowing the Debtors’ operations to continue without interruption and by reducing both the amount and priority of claims that could be asserted against the Debtors’ estates. In these Chapter 11 Cases, in the event of non-payment, the Authorities may take precipitous action, including, but not limited to, filing liens, preventing the Debtors from conducting business in the applicable jurisdictions or seeking to modify the automatic stay. Any of the foregoing would disrupt the Debtors’ day-to-day operations and could potentially impose significant costs on the Debtors’ estates. Additionally, failure to pay some of the Fees, such as the FCC Fees and Canadian Regulatory Fees, may result in a loss of the Debtors’ FCC and Canadian licenses, which, in turn, could bring the Debtors’ operations to a halt. The Debtors would be placing their ability to operate into serious jeopardy – thus, violating their fiduciary

duties to their bankruptcy estates – if they failed to pay the Taxes and Fees. Finally, non-payment of the Taxes and Fees could create difficulties in working with the Authorities during these Chapter 11 Cases and possibly hinder the Debtors' reorganization efforts. Accordingly, the Debtors seek authority to pay all amounts that become due with respect to the Taxes and Fees if such payment is necessary, in the Debtors' discretion and judgment, in order to prevent the Authorities from taking any precipitous actions and otherwise to prevent damage to the Debtors' businesses.

52. Finally, the prepetition amounts proposed to be paid, if any, in respect of the Taxes and Fees are relatively small compared with the size of the Debtors' estates, the importance of maintaining the continuity of the Debtors' operations without unnecessary distractions, and the nature of the potential liabilities the Debtors could face absent payment of the Taxes and Fees. Therefore, the payment of the Taxes and Fees is essential to preserve the Debtors' business and preserve the value of the Debtors' estates for all creditors.

53. In other large chapter 11 cases, courts in this district regularly grant relief similar to that requested herein. See, e.g., In re Eastman Kodak Co., Case No. 12-10202 (ALG) (Bankr. S.D.N.Y. Feb. 15, 2012) (Docket No. 356); In re Hostess Brands, Inc., Case No. 12-22052 (RDD) (Bankr. S.D.N.Y. Jan. 27, 2012) (Docket No. 209); In re AMR Corp., Case No. 11-15463 (SHL) (Bankr. S.D.N.Y. Dec. 23, 2011) (Docket No. 452); In re Sbarro, Inc., Case No. 11-11527 (SCC) (Bankr. S.D.N.Y. May 5, 2011) (Docket No. 170); In re The Great Atl. & Pac. Tea Co., Inc., Case No. 10-24549 (RDD) (Bankr. S.D.N.Y. Jan. 13, 2011) (Docket No. 499); In re ION Media Networks, Inc., No. 09-13125 (JMP) (Bankr. S.D.N.Y. May 21, 2009) (Docket No. 29); In re DBSD North America Inc., No. 09-13061 (REG) (Bankr. S.D.N.Y. June 5, 2009) (Docket No. 87).



**F. Cause Exists To Authorize Debtors' Financial Institutions To Honor Checks and Electronic Fund Transfers**

54. To facilitate implementation of the above-requested relief, the Debtors further request that the Court authorize and direct all applicable banks and financial institutions to receive, process, honor and pay any and all checks drawn or electronic fund transfers from its accounts whether such checks were presented prior to or after the Petition Date, to the extent such checks or electronic fund transfers are expressly identified by the Debtors as relating directly to the authorized payments of the Taxes and Fees. The Debtors also seek authority to issue new postpetition checks, or effect new electronic fund transfers, on account of such claims to replace any prepetition checks or electronic fund transfer requests that may be dishonored or rejected as a result of the commencement of the Chapter 11 Cases.

55. The Debtors believe that they have sufficient availability of funds to pay the amounts described herein in the ordinary course of business by virtue of cash reserves, expected cash flows from business operations and from the anticipated authorization to use the prepetition lenders' cash collateral.<sup>10</sup> Pursuant to the Debtors' existing cash management system, the Debtors believe that checks or wire transfer requests can be readily identified as relating to an authorized payment made pursuant to a Policy. Accordingly, the Debtors believe that checks or wire transfer requests, other than those relating to authorized payments, will not be honored inadvertently and that all applicable financial institutions should be authorized, when requested by the Debtors, to receive, process, honor and pay any and all checks or wire transfer requests in respect of the Taxes and Fees.

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<sup>10</sup> Contemporaneously with the filing of this Motion, the Debtors have filed a motion seeking authorization to use cash collateral.

56. In light of the foregoing, the Debtors respectfully submit that the relief requested herein is necessary and appropriate, is in the best interests of its estates and creditors, and should be granted in all respects.

**Reservation of Rights**

57. To the extent that any contract or agreement in connection with any of the Taxes and Fees is deemed an executory contract within the meaning of section 365 of the Bankruptcy Code, the Debtors do not at this time intend to assume such contract or agreement. As such, the Court's authorization of payment shall not be deemed to constitute an assumption of such contract or agreement pursuant to section 365 of the Bankruptcy Code. The Debtors are currently in the process of reviewing all of its contracts and agreements and reserves all of their rights with respect thereto.

58. Additionally, nothing contained herein is intended or should be construed as (a) an agreement or admission by the Debtors as to the validity of any claim against its estates, (b) a waiver or impairment of the Debtors' right to dispute any claim on any grounds, (c) a promise by the Debtors to pay any claim or (d) an implication or admission by the Debtors that such claim is payable pursuant to an Order granting the relief requested in this Motion.

**Debtors Satisfy Bankruptcy Rule 6003**

59. Bankruptcy Rule 6003 provides that, "[e]xcept to the extent that relief is necessary to avoid immediate and irreparable harm, the court shall not, within 21 days after the filing of the petition, grant relief regarding . . . a motion to use, sell, lease, or otherwise incur an obligation regarding property of the estate . . . ." Fed R. Bankr. P. 6003(b). The Debtors submit that, because the relief requested in this Motion is necessary to avoid immediate and irreparable harm to the Debtors for the reasons set forth herein, Bankruptcy Rule 6003 has been satisfied.

**Waiver of Bankruptcy Rule 6004(a) and 6004(h)**

60. To implement the foregoing successfully, the Debtors respectfully request a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the fourteen (14)-day stay of an order authorizing the use, sale or lease of property under Bankruptcy Rule 6004(h). Pursuant to Bankruptcy Rule 6004(h), “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” As set forth above, the payments proposed herein are essential to prevent potentially irreparable damage to the Debtors’ operations, value and ability to reorganize. Accordingly, the Debtors submit that ample cause exists to justify a waiver of the fourteen (14)-day stay imposed by Bankruptcy Rule 6004(h), to the extent it applies.

**Motion Practice**

61. This Motion includes citations to the applicable rules and statutory authorities upon which the relief requested herein is predicated, and a discussion of their application to this Motion. Accordingly, the Debtors submit that this Motion satisfies Rule 9013-1(a) of the Local Bankruptcy Rules for the Southern District of New York.

**Notice**

62. The Debtors have caused notice of this Motion to be provided by electronic mail, facsimile, regular or overnight mail and/or hand delivery to (a) the Office of the United States Trustee for the Southern District of New York, (b) the entities listed on the Consolidated List of Creditors Holding the 20 Largest Unsecured Claims filed pursuant to Bankruptcy Rule 1007(d), (c) counsel to the agents for the Debtors’ prepetition secured lenders, (d) counsel to the ad hoc secured group of Prepetition LP Lenders (as defined in the Montagner Declaration), (e) counsel to Harbinger Capital Partners, (f) the Internal Revenue Service, (g) the United States Attorney for the Southern District of New York, (h) the Federal Communications

Commission, (i) Industry Canada and (j) the Authorities listed on Exhibit A. Due to the urgency of the circumstances surrounding this Motion and the nature of the relief requested herein, the Debtors respectfully submit that no further notice is required or necessary.

**No Previous Request**

63. No prior motion for the relief requested herein has been made by the Debtors to this or any other court.

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WHEREFORE, for the reasons set forth above and in the Montagner Declaration, the Debtors respectfully request that the Court (a) enter the order, substantially in the form attached hereto as Exhibit B, granting the relief requested herein and (b) grant such other and further relief as the Court may deem just and proper.

New York, New York  
Dated: May 14, 2012

/s/ Matthew S. Barr  
Paul S. Aronzon (*pro hac vice* pending)  
Matthew S. Barr  
Steven Z. Szanzer  
Karen Gartenberg  
MILBANK, TWEED, HADLEY & McCLOY LLP  
One Chase Manhattan Plaza  
New York, NY 10005-1413  
(212) 530-5000

*Proposed Counsel to Debtors and Debtors in Possession*

**Exhibit A**

**List of Authorities**

**Authorities<sup>1</sup>**

<b>Type of Tax or Fee</b>	<b>Taxing or Regulatory Authority</b>	<b>Contact Information</b>	<b>Amount Accrued and Owing as of Petition Date</b>
Sales and Use Tax	Virginia Department of Taxation	PO Box 26626 Richmond, VA 23261-6626	\$350
Sales Tax	NYS Department of Taxation and Finance	NYS Department of Taxation and Finance, Sales Tax W.A. Harriman Campus Albany, NY 12227	\$50
Sales Tax	Arizona Department of Revenue	License and Registration Section Department of Revenue Phoenix, AZ 85007	\$85
Sales Tax	Arkansas Department of Finance	P.O. Box 3215 Little Rock, AR 72203	\$85
Sales Tax	Florida Dept. of Revenue	P.O. Box 6520 Tallahassee, FL 32314-6520	\$85
Sales Tax	Illinois Department of Revenue	PO Box 19019 Springfield, IL 62794-9019	\$100
Sales Tax	Kentucky Department of Revenue	KY Department of Revenue Frankfort, KY 40620	\$20
Sales Tax	Comptroller of Maryland	Revenue Administration Division 110 Carroll St. Annapolis, MD 21411	\$450
Sales Tax	Massachusetts Department of Revenue	PO Box 7039 Boston, MA 02204-7036	\$10
Sales Tax	Missouri Department Of Revenue	Taxation Division PO Box 840 Jefferson City, MO 65105-840	\$50
Sales Tax	Mississippi State Tax Commission	PO Box 960 Jackson, MS 39205	\$85
Sales Tax	Nebraska Department Of Revenue	PO Box 98923 Lincoln, NE 68509-8923	\$125
Sales Tax	New Jersey Sales And Use Tax	PO Box 999 Trenton, NJ 08646-0999	\$20
Sales Tax	North Carolina Department Of	PO Box 25000 Raleigh, NC 27640-0700	\$1,250

<sup>1</sup> This list contains a non-exclusive list of Authorities and the Taxes and Fees that the Debtors collect and/or incur on behalf of each of the Authorities. The relief requested in the Motion applies to all Authorities for which the Debtors collect and/or incur Taxes and Fees and is not limited solely to those Authorities included in this list. All amounts listed are approximate.

Type of Tax or Fee	Taxing or Regulatory Authority	Contact Information	Amount Accrued and Owing as of Petition Date
	Revenue		
Sales Tax	Tennessee Department of Revenue	Andrew Jackson Office Building 500 Deaderick St. Nashville, TN 37242	\$100
Sales Tax	Texas Comptroller Of Public Accounts	PO Box 13528 Austin, TX 78711-3528	\$10
Sales Tax	Washington Department Of Revenue	State Of Washington PO Box 34052 Seattle, WA 98124-1052	\$250
State Corporate and Partnership Income Tax	Alaska Department of Revenue	Tax Division P.O. Box 110420, Juneau, AK 99811-0420	\$0
State Corporate Income Tax	Arkansas Corporation Income Tax	P.O. Box 919 Little Rock, AR 72203-0919	\$0
State Corporate and Partnership Income Tax	State of California Franchise Tax Board	P.O. Box 942857, Sacramento, CA 94257-0600	\$0
State Corporate and Partnership Income Tax	Colorado Department of Revenue	1375 Sherman St., Denver, CO 80261-0006	\$0
State Corporate and Partnership Income Tax	Florida Department of Revenue	5050 W. Tennessee St., Tallahassee, FL 32399-0135	\$0
State Corporate and Partnership Income Tax	Illinois Department of Revenue	P.O. Box 19031, Springfield, IL 62794-9031	\$0
State Corporate and Partnership Income Tax	Kansas Corporate Tax	915 SW Harrison St., Topeka, KS 66699-4000	\$0
State Corporate and Partnership Income Tax	Kentucky Department of Revenue	Kentucky Department of Revenue Frankfort, KY 40620	\$0
State Corporate and Partnership Income Tax	Louisiana Department of Revenue	P. O. Box 3440, Baton Rouge, LA 70821-3440	\$0
State Corporate and Partnership Income Tax	Massachusetts DOR	P.O. Box 7017, Boston, MA 02204- 7000	\$0
State Corporate and Partnership Income Tax	Comptroller of Maryland	Comptroller of Maryland Revenue Administration Division, Annapolis, Maryland 21411-0001	\$0
State Corporate and Partnership	Missouri Department of Revenue	P.O. Box 3000, Jefferson City, MO 65105-3000	\$0



Type of Tax or Fee	Taxing or Regulatory Authority	Contact Information	Amount Accrued and Owing as of Petition Date
Income Tax			
State Corporate and Partnership Income Tax	Mississippi Office of Revenue	P.O. Box 23050, Jackson, MS 39225-3050	\$0
State Corporate and Partnership Income Tax	Montana Department of Revenue	P.O. Box 8021, Helena, MT 59604-8021	\$0
State Corporate and Partnership Income Tax	NC Department of Revenue	P.O. Box 25000, Raleigh, NC 27640-0645	\$0
State Corporate and Partnership Income Tax	Nebraska Department of Revenue	P.O. Box 94818, Lincoln NE 68509-4818	\$0
State Corporate and Partnership Income Tax	New York State Processing Center	P.O. Box 61000, Albany, NY 12261-0001	\$0
State Corporate and Partnership Income Tax	Oklahoma Tax Commission	Income Tax, P.O. Box 26800, Oklahoma City, OK 73126-0800	\$0
State Corporate and Partnership Income Tax	PA Department of Revenue	Bureau of Individual Taxes, P.O. Box 280509, Harrisburg, PA 17128-0509	\$0
State Corporate and Partnership Income Tax	SCDOR, Partnership Return	SCDOR, Partnership Return Columbia, SC 29214-0008	\$0
State Corporate and Partnership Income Tax	Tennessee Department of Revenue	Andrew Jackson State Office Building, 500 Deaderick Street, Nashville, TN 37242	\$0
State Corporate Income Tax	Texas Comptroller Of Public Accounts	PO Box 149348 Austin, TX 78714-9348	\$0
State Corporate and Partnership Income Tax	Utah State Tax Commission	210 N 1950, W Salt Lake City, UT 84134-0270	\$0
State Corporate and Partnership Income Tax	Virginia Department of Taxation	P.O. Box 1500 Richmond, Virginia 23218-1500	\$50,000 * * Inclusive of communications minimum and gross receipts.
Property Tax	County of Fairfax	Department of Tax Administration Fairfax, Virginia 22035	Unknown
Property Tax	Dallas County Tax Office	John R. Ames, CTA Tax Assessor/Collector 500 Elm Street, Dallas, TX 75202	Unknown
Property Tax	Napa County	Tamie R. Frasier Treasurer-Tax Collector	Unknown

<b>Type of Tax or Fee</b>	<b>Taxing or Regulatory Authority</b>	<b>Contact Information</b>	<b>Amount Accrued and Owing as of Petition Date</b>
		1195 Third Street Suite 108 Napa, CA 94559-3050	
City Income Tax	New York City's Department of Finance	P.O. Box 5060, Kingston, NY 12402-5060	\$0
Canadian Income Tax	Canada Revenue Agency	Sudbury Tax Centre 1050 Notre Dame Avenue, Sudbury ON Canada P3A 5C1	\$0
Canadian Goods and Services Tax	Canada Revenue Agency	Tax Centre PO Box 6000 STN Main, Shawinigan-SUD QC Canada G9N 7W2	\$0
Canadian Provincial Taxes, Sales and Income Taxes	Saskatchewan Finance	2350 Albert Street Regina, Saskatchewan Canada S4P 4A6	\$0

**Exhibit B**

**Proposed Interim Order**

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

In re: )  
 ) Chapter 11  
 )  
LIGHTSQUARED INC., *et al.*, ) Case No. 12-\_\_\_\_ ( )  
 )  
Debtors.<sup>1</sup> ) Joint Administration Requested  
 )

**INTERIM ORDER (A) AUTHORIZING, BUT NOT DIRECTING,  
DEBTORS TO PAY TAXES AND FEES AND (B) AUTHORIZING AND  
DIRECTING FINANCIAL INSTITUTIONS TO HONOR ALL RELATED  
CHECKS AND ELECTRONIC PAYMENT REQUESTS**

Upon the motion (the “Motion”)<sup>2</sup> of LightSquared Inc. and certain of its affiliates, as debtors and debtors in possession (collectively, the “Debtors”) in the above-captioned chapter 11 cases (the “Chapter 11 Cases”), for entry of an order (the “Interim Order”), pursuant to sections 105(a), 363(b), 507(a)(8), 541, 1107(a) and 1108 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as amended, the “Bankruptcy Code”) and Rules 1007(c), 6003, 6004, and 9006(b) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”),

(a) authorizing, but not directing, the Debtors to pay certain business, corporate, franchise, partnership, personal property, provincial, capital, non-resident withholding, sales and use, goods and services, harmonized sales, excise and other taxes, as well as certain annual reporting fees, FCC Fees and Canadian Regulatory Fees, (b) authorizing and directing financial institutions to

The debtors in these chapter 11 cases, along with the last four digits of each debtor's federal or foreign tax or registration identification number, are: LightSquared Inc. (8845), LightSquared Investors Holdings Inc. (0984), One Dot Four Corp. (8806), One Dot Six Corp. (8763), SkyTerra Rollup LLC (N/A), SkyTerra Rollup Sub LLC (N/A), SkyTerra Investors LLC (N/A), TMI Communications Delaware, Limited Partnership (4456), LightSquared GP Inc. (6190), LightSquared LP (3801), ATC Technologies, LLC (3432), LightSquared Corp. (1361), LightSquared Finance Co. (6962), LightSquared Network LLC (1750), LightSquared Inc. of Virginia (9725), LightSquared Subsidiary LLC (9821), Lightsquared Bermuda Ltd. (7247), SkyTerra Holdings (Canada) Inc. (0631), SkyTerra (Canada) Inc. (0629) and One Dot Six TVCC Corp. (0040). The location of the debtors' corporate headquarters is 450 Park Avenue, Suite 2201, New York, NY 10022.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Motion or in the Montagner Declaration, as applicable.

receive, process, honor and pay all checks issued and electronic requests made relating to the foregoing, and (c) scheduling a final hearing (the "Final Hearing") to consider entry of a final order (the "Final Order") granting the relief provided in the Interim Order on a permanent basis and the additional relief described in the Motion; and upon the Montagner Declaration; and it appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and it appearing that this proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and it appearing that venue of this proceeding and the Motion in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and notice of the Motion appearing adequate and appropriate under the circumstances; and the Court having found that no other or further notice is needed or necessary; and the Court having reviewed the Motion and the Montagner Declaration and having heard statements in support of the Motion at a hearing held before the Court (the "Hearing"); and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and it appearing, and the Court having found, that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors and other parties in interest; and any objections to the relief requested in the Motion having been withdrawn or overruled on the merits; and after due deliberation and sufficient cause appearing therefor, it is hereby **ORDERED** that:

1. The Motion is granted on an interim basis to the extent set forth herein.
2. The Debtors are authorized and empowered, but not directed, in their sole discretion, to pay all Taxes and Fees in the ordinary course of their businesses, including all Taxes and Fees subsequently determined upon audit to be owed for periods prior to the Petition Date, to the proper Taxing and Regulatory Authorities, including but not limited to those

Authorities listed on Schedule 1 attached hereto.<sup>3</sup> Notwithstanding the foregoing, the Debtors are not authorized to accelerate payments not otherwise due and payable before the Final Hearing.

3. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the Taxes and Fees approved herein are authorized and directed to receive, process, honor and pay all such checks and electronic payment requests when presented for payment (to the extent of funds on deposit), and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Interim Order.

4. The Debtors are authorized, but not directed, in their sole discretion, to issue new postpetition checks, or effect new funds transfers, on account of the Taxes and Fees, to replace any prepetition checks or funds transfer requests issued that are dishonored or rejected as a result of the commencement of these Chapter 11 Cases.

5. The banks and financial institutions subject to this Interim Order shall have no liability in connection with honoring any prepetition checks or funds transfer requests contemplated by this Interim Order.

6. Neither the Debtors nor any other party in interest concedes the extent or validity of any liens (contractual, common law, statutory or otherwise) asserted on account of unpaid Taxes and Fees, and the Debtors expressly reserve the right to contest the extent, validity or perfection or seek the avoidance of all such liens.

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<sup>3</sup> Schedule 1 contains a non-exclusive list of Authorities and the Taxes and Fees that the Debtors collect and/or incur on behalf of each of the Authorities. The relief granted in this Order applies to all Authorities for which the Debtors collect and/or incur Taxes and Fees and is not limited solely to those Authorities included in Schedule 1.

7. Nothing in this Interim Order or any action taken by the Debtors in furtherance of the implementation hereof shall be deemed an assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code, and the Debtors' rights with respect to such matters are expressly reserved.

8. Nothing in the Motion or this Interim Order, nor the Debtors' payment of claims pursuant to this Interim Order, shall be construed as (a) an admission as to the validity of any claim against the Debtors, (b) a waiver or impairment of the Debtors' rights to contest the validity or amount of any claim on any grounds, (c) a promise to pay any claim or (d) an implication or admission by the Debtors that such claim is payable as Taxes and Fees pursuant to this Interim Order.

9. Bankruptcy Rule 6003(b) has been satisfied because the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors.

10. Notwithstanding the possible applicability of Bankruptcy Rules 6004(a), 6004(h) or otherwise, the terms and conditions of this Interim Order shall be immediately effective and enforceable upon its entry.

11. The Final Hearing to consider entry of the Final Order is scheduled for \_\_\_\_\_, 2012 at \_\_\_\_\_.m. (prevailing Eastern time) before this Court. On or before \_\_\_\_\_, 2012, the Debtors shall serve, by United States mail, first-class postage prepaid, notice of the entry of this Interim Order and of the Final Hearing (the "Final Hearing Notice"), together with copies of this Interim Order and the Motion, on: (a) the parties having been given notice of the Interim Hearing, (b) any party which has filed prior to such date a request for notices with this Court and (c) counsel to the official committee of unsecured creditors (the "Committee"). The Final Hearing Notice shall state that any party in interest objecting to the

entry of the proposed Final order shall file written objections with the Clerk of Court no later than on \_\_\_\_\_, 2012 at 4:00 p.m. (prevailing Eastern time), which objections shall be served so as to be received on or before such date by: (a) LightSquared Inc., 450 Park Avenue, Suite 2201, New York, NY 10022, Attn: Marc R. Montagner and Curtis Lu, Esq., (b) proposed counsel to the Debtors, Milbank, Tweed, Hadley & McCloy LLP, One Chase Manhattan Plaza, New York, NY 10005, Attn: Matthew S. Barr, Esq. and Karen Gartenberg, Esq., (c) the Office of the United States Trustee for the Southern District of New York and (d) counsel to the Committee.

12. The Debtors are authorized and empowered to take all actions necessary to effectuate the relief granted pursuant to this Interim Order in accordance with the Motion.

13. The requirements set forth in Local Rule 9013-1 are satisfied.

14. The Court retains jurisdiction with respect to all matters arising from or related to the implementation and interpretation of this Interim Order.

New York, New York  
Dated: \_\_\_\_\_, 2012

\_\_\_\_\_  
UNITED STATES BANKRUPTCY JUDGE



**Schedule 1**

**List of Authorities**

**Authorities<sup>1</sup>**

<b>Type of Tax or Fee</b>	<b>Taxing or Regulatory Authority</b>	<b>Contact Information</b>	<b>Amount Accrued and Owing as of Petition Date</b>
Sales and Use Tax	Virginia Department of Taxation	PO Box 26626 Richmond, VA 23261-6626	\$350
Sales Tax	NYS Department of Taxation and Finance	NYS Department of Taxation and Finance, Sales Tax W.A. Harriman Campus Albany, NY 12227	\$50
Sales Tax	Arizona Department of Revenue	License and Registration Section Department of Revenue Phoenix, AZ 85007	\$85
Sales Tax	Arkansas Department of Finance	P.O. Box 3215 Little Rock, AR 72203	\$85
Sales Tax	Florida Dept. of Revenue	P.O. Box 6520 Tallahassee, FL 32314-6520	\$85
Sales Tax	Illinois Department of Revenue	PO Box 19019 Springfield, IL 62794-9019	\$100
Sales Tax	Kentucky Department of Revenue	KY Department of Revenue Frankfort, KY 40620	\$20
Sales Tax	Comptroller of Maryland	Revenue Administration Division 110 Carroll St. Annapolis, MD 21411	\$450
Sales Tax	Massachusetts Department of Revenue	PO Box 7039 Boston, MA 02204-7036	\$10
Sales Tax	Missouri Department Of Revenue	Taxation Division PO Box 840 Jefferson City, MO 65105-840	\$50
Sales Tax	Mississippi State Tax Commission	PO Box 960 Jackson, MS 39205	\$85
Sales Tax	Nebraska Department Of Revenue	PO Box 98923 Lincoln, NE 68509-8923	\$125
Sales Tax	New Jersey Sales And Use Tax	PO Box 999 Trenton, NJ 08646-0999	\$20
Sales Tax	North Carolina Department Of	PO Box 25000 Raleigh, NC 27640-0700	\$1,250

<sup>1</sup> This list contains a non-exclusive list of Authorities and the Taxes and Fees that the Debtors collect and/or incur on behalf of each of the Authorities. The relief granted in this Order applies to all Authorities for which the Debtors collect and/or incur Taxes and Fees and is not limited solely to those Authorities included in this list.

Type of Tax or Fee	Taxing or Regulatory Authority	Contact Information	Amount Accrued and Owing as of Petition Date
	Revenue		
Sales Tax	Tennessee Department of Revenue	Andrew Jackson Office Building 500 Deaderick St. Nashville, TN 37242	\$100
Sales Tax	Texas Comptroller Of Public Accounts	PO Box 13528 Austin, TX 78711-3528	\$10
Sales Tax	Washington Department Of Revenue	State Of Washington PO Box 34052 Seattle, WA 98124-1052	\$250
State Corporate and Partnership Income Tax	Alaska Department of Revenue	Tax Division P.O. Box 110420, Juneau, AK 99811-0420	\$0
State Corporate Income Tax	Arkansas Corporation Income Tax	P.O. Box 919 Little Rock, AR 72203-0919	\$0
State Corporate and Partnership Income Tax	State of California Franchise Tax Board	P.O. Box 942857, Sacramento, CA 94257-0600	\$0
State Corporate and Partnership Income Tax	Colorado Department of Revenue	1375 Sherman St., Denver, CO 80261-0006	\$0
State Corporate and Partnership Income Tax	Florida Department of Revenue	5050 W. Tennessee St., Tallahassee, FL 32399-0135	\$0
State Corporate and Partnership Income Tax	Illinois Department of Revenue	P.O. Box 19031, Springfield, IL 62794-9031	\$0
State Corporate and Partnership Income Tax	Kansas Corporate Tax	915 SW Harrison St., Topeka, KS 66699-4000	\$0
State Corporate and Partnership Income Tax	Kentucky Department of Revenue	Kentucky Department of Revenue Frankfort, KY 40620	\$0
State Corporate and Partnership Income Tax	Louisiana Department of Revenue	P. O. Box 3440, Baton Rouge, LA 70821-3440	\$0
State Corporate and Partnership Income Tax	Massachusetts DOR	P.O. Box 7017, Boston, MA 02204- 7000	\$0
State Corporate and Partnership Income Tax	Comptroller of Maryland	Comptroller of Maryland Revenue Administration Division, Annapolis, Maryland 21411-0001	\$0
State Corporate and Partnership	Missouri Department of Revenue	P.O. Box 3000, Jefferson City, MO 65105-3000	\$0

<b>Type of Tax or Fee</b>	<b>Taxing or Regulatory Authority</b>	<b>Contact Information</b>	<b>Amount Accrued and Owing as of Petition Date</b>
Income Tax			
State Corporate and Partnership Income Tax	Mississippi Office of Revenue	P.O. Box 23050, Jackson, MS 39225-3050	\$0
State Corporate and Partnership Income Tax	Montana Department of Revenue	P.O. Box 8021, Helena, MT 59604-8021	\$0
State Corporate and Partnership Income Tax	NC Department of Revenue	P.O. Box 25000, Raleigh, NC 27640-0645	\$0
State Corporate and Partnership Income Tax	Nebraska Department of Revenue	P.O. Box 94818, Lincoln NE 68509-4818	\$0
State Corporate and Partnership Income Tax	New York State Processing Center	P.O. Box 61000, Albany, NY 12261-0001	\$0
State Corporate and Partnership Income Tax	Oklahoma Tax Commission	Income Tax, P.O. Box 26800, Oklahoma City, OK 73126-0800	\$0
State Corporate and Partnership Income Tax	PA Department of Revenue	Bureau of Individual Taxes, P.O. Box 280509, Harrisburg, PA 17128-0509	\$0
State Corporate and Partnership Income Tax	SCDOR, Partnership Return	SCDOR, Partnership Return Columbia, SC 29214-0008	\$0
State Corporate and Partnership Income Tax	Tennessee Department of Revenue	Andrew Jackson State Office Building, 500 Deaderick Street, Nashville, TN 37242	\$0
State Corporate Income Tax	Texas Comptroller Of Public Accounts	PO Box 149348 Austin, TX 78714-9348	\$0
State Corporate and Partnership Income Tax	Utah State Tax Commission	210 N 1950, W Salt Lake City, UT 84134-0270	\$0
State Corporate and Partnership Income Tax	Virginia Department of Taxation	P.O. Box 1500 Richmond, Virginia 23218-1500	\$50,000 * * Inclusive of communications minimum and gross receipts.
Property Tax	County of Fairfax	Department of Tax Administration Fairfax, Virginia 22035	Unknown
Property Tax	Dallas County Tax Office	John R. Ames, CTA Tax Assessor/Collector 500 Elm Street, Dallas, TX 75202	Unknown
Property Tax	Napa County	Tamie R. Frasier Treasurer-Tax Collector	Unknown

<b>Type of Tax or Fee</b>	<b>Taxing or Regulatory Authority</b>	<b>Contact Information</b>	<b>Amount Accrued and Owing as of Petition Date</b>
		1195 Third Street Suite 108 Napa, CA 94559-3050	
City Income Tax	New York City's Department of Finance	P.O. Box 5060, Kingston, NY 12402-5060	\$0
Canadian Income Tax	Canada Revenue Agency	Sudbury Tax Centre 1050 Notre Dame Avenue, Sudbury ON Canada P3A 5C1	\$0
Canadian Goods and Services Tax	Canada Revenue Agency	Tax Centre PO Box 6000 STN Main, Shawinigan-SUD QC Canada G9N 7W2	\$0
Canadian Provincial Taxes, Sales and Income Taxes	Saskatchewan Finance	2350 Albert Street Regina, Saskatchewan Canada S4P 4A6	\$0

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C 36, AS AMENDED,  
APPLICATION OF LIGHTSQUARED LP UNDER SECTION 46 OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,  
R.S.C. 1985, c. C 36, AS AMENDED, AND IN THE MATTER OF CERTAIN PROCEEDINGS TAKEN IN THE UNITED  
STATES BANKRUPTCY COURT WITH RESPECT TO THE CHAPTER 11 DEBTORS

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**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
  
PROCEEDING COMMENCED AT  
TORONTO  
  
**MOTION RECORD**  
**(Returnable June 14, 2012)**  
  
FRASER MILNER CASGRAIN LLP  
77 King Street West, Suite 400  
Toronto-Dominion Centre  
Toronto, Ontario  
M5K 0A1  
  
R. Shayne Kukulowicz / Jane O. Dietrich  
LSUC No.: 30729S / 49302U  
Tel: 416 863-4740 / (416) 863-4467  
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jane.dietrich@fmc-law.com

*Lawyers for the Chapter 11 Debtors.*