

TAB 2

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
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
LIGHTSQUARED INC., LIGHTSQUARED INVESTORS HOLDINGS INC., ONE
DOT FOUR CORP., ONE DOT SIX CORP., SKYTERRA ROLLUP LLC,
SKYTERRA ROLLUP SUB LLC, SKYTERRA INVESTORS LLC, TMI
COMMUNICATIONS DELAWARE, LIMITED PARTNERSHIP,
LIGHTSQUARED GP INC., LIGHTSQUARED LP, ATC TECHNOLOGIES,
LLC, LIGHTSQUARED CORP., LIGHTSQUARED FINANCE CO.,
LIGHTSQUARED NETWORK LLC, LIGHTSQUARED INC. OF VIRGINIA,
LIGHTSQUARED SUBSIDIARY LLC, LIGHTSQUARED BERMUDA LTD.,
SKYTERRA HOLDINGS (CANADA) INC., SKYTERRA (CANADA) INC. AND
ONE DOT SIX TVCC CORP. (COLLECTIVELY, THE "CHAPTER 11
DEBTORS")**

**AFFIDAVIT OF ELIZABETH CREARY
(Sworn October 10, 2013)**

I, Elizabeth Creary of the City of Ottawa, in the Province of Ontario, **MAKE OATH
AND SAY THAT:**

1. I am the Vice President and Assistant General Counsel of LightSquared LP ("LightSquared" or the "Foreign Representative"). As such, I have personal knowledge of the matters to which I herein depose. Where the source of my information or belief is other than my own personal knowledge, I have identified the source and the basis for my information and verily believe it to be true.

2. This Affidavit is filed in support of the Foreign Representative's motion for an order, *inter alia*, recognizing in Canada and giving full force and effect in all provinces and territories of Canada, pursuant to section 49 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C. 36, as amended (the "CCAA"), to an order of the United States Bankruptcy Court for the Southern District of New York (the "**U.S. Bankruptcy Court**") made in the cases commenced by the Chapter 11 Debtors in the U.S. Bankruptcy Court under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "**Chapter 11 Cases**").

Corporate Overview

3. The Chapter 11 Debtors were collectively the first private satellite-communications company to offer mobile satellite services throughout North America, initially using two geostationary satellites, as well as a portion of the electromagnetic spectrum known as the L-Band.

4. The Chapter 11 Debtors are in the process of building what was at the time of the filing the only 4th Generation Long Term Evolution ("**4G LTE**") open wireless broadband network that incorporates nationwide satellite coverage throughout North America and offers users, wherever they may be located, the speed, value and reliability of universal connectivity.

5. Through a unique wholesale business model, entities without their own wireless networks, or that have limited geographic coverage or spectrum, will be able to market and sell their own devices, applications and services at a competitive price using the Chapter 11 Debtors' 4G LTE network.

Background on Proceedings

6. On May 14, 2012, the Chapter 11 Debtors commenced the Chapter 11 Cases by each filing a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 in the U.S. Bankruptcy Court. Other than the Chapter 11 Cases and these proceedings, there are no other foreign proceedings in respect of the Chapter 11 Debtors.

7. On May 15, 2012, the Honourable Justice Morawetz of the Ontario Superior Court of Justice (Commercial List) (the “**Canadian Court**”) granted an order providing certain interim relief to the Chapter 11 Debtors, including a stay of proceedings in respect of the Chapter 11 Debtors, the property and business of the Chapter 11 Debtors and the directors and officers of the Chapter 11 Debtors.

8. On May 15, 2012 and May 16, 2012, the U.S. Bankruptcy Court in the Chapter 11 Cases entered various “first day” orders, including an interim order authorizing LightSquared to act as the Foreign Representative of the Chapter 11 Debtors.

9. On May 18, 2012, the Honourable Justice Morawetz granted an Initial Recognition Order in these proceedings, which among other things: (i) recognized LightSquared as the “foreign representative” of the Chapter 11 Debtors; (ii) declared the Chapter 11 Cases to be a “foreign main proceeding” pursuant to Part IV of the CCAA; and (iii) stayed all proceedings against the Chapter 11 Debtors.

10. On May 18, 2012, the Honourable Justice Morawetz also granted a Supplemental Order in these proceedings, which among other things: (i) appointed Alvarez & Marsal Canada Inc. as Information Officer in these proceedings (the “**Information Officer**”); (ii) stayed all claims and proceedings in respect of the Chapter 11 Debtors, the property and business of the Chapter 11 Debtors and the directors and officers of the Chapter 11 Debtors; (iii) granted a super-priority charge over the Chapter 11 Debtors’ property, in favour of the Information Officer and its counsel, as security for their professional fees and disbursements incurred in respect of these proceedings; and (iv) recognized and enforced in Canada certain orders of the U.S. Bankruptcy Court in the Chapter 11 Cases, including the Interim Order Authorizing LightSquared LP to Act as Foreign Representative Pursuant to 11 U.S.C. § 1505.

11. On June 14, 2012, the Canadian Court recognized and enforced in Canada certain orders of the U.S. Bankruptcy Court made in the Chapter 11 Cases, including the “Final Order Authorizing LightSquared LP to Act as Foreign Representative Pursuant to 11 U.S.C. § 1505”.

12. On August 21, 2012, the Canadian Court recognized and enforced in Canada certain orders of the U.S. Bankruptcy Court made in the Chapter 11 Cases, including the “Order Granting LightSquared’s Motion for Order Approving Expedited Procedures for Sale, Transfer, and/or Abandonment of De Minimis Assets” (the “**De Minimis Order**”) and the “Order Pursuant to 11 U.S.C. § 502(b)(9) and Fed. R. Bankr. P. 2002 and 3003(c)(3) Establishing Deadlines for Filing Proofs of Claim and Procedures Relating Thereto and Approving Form and Manner of Notice Thereof (the “**Claims Procedure Order**”).

13. The De Minimis Order permitted the Chapter 11 Debtors to abandon de minimis assets with book value of (a) \$500,000 or less with no notice or hearing where maintaining such assets is more expensive than not doing so and it appears after reasonable investigation and consultation with certain interested parties that it is not possible to sell such assets for more than the likely expense of such sale, and (b) over \$500,000, but less than or equal to \$1 million, pursuant to certain notice procedures set forth in detail in the De Minimis Order.

14. On March 8, 2013, the Canadian Court recognized and enforced in Canada certain orders of the U.S. Bankruptcy Court made in the Chapter 11 Cases, including the “Order Pursuant to 11 U.S.C. § 1121(d) Further Extending the Chapter 11 Debtors Exclusive Periods To File a Plan of Reorganization and Solicit Acceptances Thereof” and the “Amended Agreed Final Order (A) Authorizing Debtors To Use Cash Collateral, (B) Granting Adequate Protection to Prepetition Secured Parties, and (C) Modifying Automatic Stay”.

15. On March 20, 2013, the Canadian Court: (i) recognized and enforced in Canada the “Order, Pursuant to 11 U.S.C. §§ 105(a), 363(b), and 363(f), (A) Approving and Authorizing LightSquared Network LLC and LightSquared Corp. To Enter into Consignment Agreement (the “**Consignment Agreement**”) with Rincon Technology, Inc. (“**Rincon**”), (B) Authorizing Sale of Consigned Property (the “**Transactions**”), and (C) Authorizing LightSquared To Abandon Unsold Property”; (ii) approved the Consignment Agreement and the Transactions; and (iii) vested in Rincon the relevant

Canadian assets contemplated under the Consignment Agreement on the closing of a Transaction.

16. On August 13, 2013, the Canadian Court recognized and enforced in Canada the “Order Scheduling Certain Hearing Dates and Establishing Deadlines in Connection with Chapter 11 Plan Process”.

17. On October 9, 2013, the Canadian Court recognized and enforced in Canada the following three orders of the U.S. Bankruptcy Court:

- (a) “Order Approving Expense Reimbursement and Related Relief for L-Band Acquisition, LLC and Mast Spectrum Acquisition Company LLC and Related Entities”;
- (b) “Order (A) Establishing Bid Procedures, (B) Scheduling Date and Time for Auction, (C) Approving Assumption and Assignment Procedures, (D) Approving Form of Notice, and (E) Granting Related Relief” (the “**Bid Procedures Order**”); and
- (c) Final Order (I) Approving Compensation for Independent Directors, (II) Authorizing Administrative Expense Priority for Indemnification Claims Arising from Postpetition Services of Independent Directors, and (III) Granting Related Relief’.

Foreign Order

18. The chapter 11 plan process in the Chapter 11 Cases requires disclosure statements to be filed with the U.S. Bankruptcy Court.

19. The Chapter 11 Debtors filed the General Disclosure Statement with the U.S. Bankruptcy Court on August 29, 2013. The General Disclosure Statement provides general information on the Chapter 11 Debtors and the Chapter 11 Cases and is intended to apply to all chapter 11 plans filed in the Chapter 11 Cases.

20. In late August, each of the plan proponents, being the Chapter 11 Debtors, Harbinger Capital Partners, LLC (“**Harbinger**”), the ad hoc secured group of LightSquared LP Lenders, exclusive of SP Special Opportunities, LLC (the “**Ad Hoc Secured Group**”) and U.S. Bank National Association (“**U.S. Bank**”) together with MAST Capital Management, LLC (on behalf of itself and its management funds and

accounts) (“**MAST**”), also filed individual Specific Disclosure Statements and brought corresponding motions seeking approval from the U.S. Bankruptcy Court of the adequacy of their Specific Disclosure Statements (the “**Disclosure Statement Motions**”).

21. The motion records filed by the parties in support of the Disclosure Statement Motions can be found on the website maintained for the Chapter 11 Cases by Kurtzman Carson Consultants LLC at <http://www.kccllc.net/LightSquared> (the “**Website**”) (Docket numbers 819, 825, 805 and 826 respectively).

22. The hearing of the Disclosure Statement Motions was originally scheduled for September 30, 2013, but was subsequently adjourned to October 9, 2013 by the U.S. Bankruptcy Court.

23. Returnable at the same time as the Disclosure Statement Motions was the hearing of the motions to approve the (i) solicitation and notice procedures with respect to confirmation of the competing chapter 11 plans, (ii) forms of ballots and notices in connection therewith, and (iii) scheduling of certain dates in connection with confirmation of the competing chapter 11 plans (the “**Solicitation Procedures Motions**”).

24. Both the Chapter 11 Debtors and the Ad Hoc Secured Group filed motions for approval of solicitation procedures and related relief. However, at the return of the motion, the Ad Hoc Secured Group did not proceed with their request for this relief and accordingly no competing solicitation procedures were before the U.S. Bankruptcy Court at the October 9, 2013 hearing.

25. The Ad Hoc Secured Group’s solicitation motion was combined with their Specific Disclosure Statement motion, which motion record is found on the Website at Docket number 805. The Chapter 11 Debtors solicitation procedures motion record can be found on the Website at Docket number 820.

26. On October 9, 2013, the U.S. Bankruptcy Court heard the Disclosure Statement Motions and the Solicitation Procedures Motions, and having determined the cumulative relief sought therein to be appropriate on October 10, 2013 entered the “Order (I) Approving Disclosure Statements, (II) Approving Solicitation and Notice Procedures with Respect to Confirmation of Competing Plans, (III) Approving Forms of Various Ballots and Notices in Connection Therewith, (IV) Approving Scheduling of Certain Dates in Connection with Confirmation of Competing Plans, and (V) Granting Related Relief” (the “**Disclosure and Solicitation Order**”). A copy of the entered Disclosure and Solicitation Order is attached to this my affidavit at **Exhibit “A”**.

27. The Disclosure and Solicitation Order:

- (a) Approves the General Disclosure Statement filed by the Chapter 11 Debtors and the Specific Disclosure Statements filed by the Chapter 11 Debtors, Harbinger, the Ad Hoc Secured Group and U.S. Bank and MAST (collectively, the “**Disclosure Statements**”). Copies of the Disclosure Statements are attached to this my affidavit at **Exhibits “B” to “F”** **respectively**;
- (b) Finds that the Disclosure Statements contain “adequate information”, as required under the U.S. Bankruptcy Code;
- (c) Finds that the Disclosure Statements, competing plans, Confirmation Hearing Notice and Ballots (each, as defined in the Disclosure and Solicitation Order) provide all parties in interest with sufficient notice regarding the settlement, release, exculpation, and injunction provisions contained in the competing plans;
- (d) Approves the solicitation procedures, substantially in the form attached to the Disclosure and Solicitation Order at **Schedule 1** (the “**Solicitation Procedures**”);

- (e) Requires the solicitation packages to be distributed to all entities entitled to vote to accept or reject any of the competing plans and each holder of record of the debt instruments, on or before October 24, 2013, unless otherwise extended until October 29, 2013 by the Chapter 11 Debtors with the consent of the plan proponents;
- (f) Approves the form of Ballot (including the voting instructions), substantially in the form attached to the Disclosure and Solicitation Order as Schedule 2;
- (g) Approves the Confirmation Hearing Notice, substantially in the form attached to the Disclosure and Solicitation Order as Schedule 3;
- (h) Requires the Confirmation Hearing Notice to be (a) served on all holders of claims or equity interests regardless of whether such holders are entitled to vote on any of the competing plans and (b) published in *The Wall Street Journal* (national edition) and *The Globe and Mail* (national edition) no later than October 29, 2013;
- (i) Approves the Notice of Non-Voting Status, substantially in the form attached to the Disclosure and Solicitation Order as Schedule 4;
- (j) Requires the Voting Report to be served and filed with the U.S. Bankruptcy Court on or before December 9, 2013;
- (k) Requires the Chapter 11 Debtors to file with the U.S. Bankruptcy Court, and serve upon all counterparties by no later than November 22, 2013, a notice, substantially in the form attached hereto as Schedule 6, regarding any potential assumption or assumption and assignment, of their executory contract or unexpired lease and the proposed cure obligations in connection therewith;
- (l) Requires that any objection by a counterparty to an executory contract or unexpired lease to any potential assumption, assumption and assignment, or related cure cost must be filed, served, and actually received by the

notice parties by no later than November 29, 2013 at 4:00 p.m. (prevailing Eastern time); provided, however, that any objection by a counterparty to an executory contract or unexpired lease solely to a proposed assignee's financial wherewithal must be filed, served, and actually received by the appropriate notice parties no later than December 6, 2013 at 11:59 p.m. (prevailing Eastern time); provided, further, that in the event that the Notice of Successful Bidder(s) (as provided in paragraph 15(b) of the Bid Procedures Order) has not been filed with the U.S. Bankruptcy Court Court or posted on the Website at least twenty-four (24) hours prior to the December 6th deadline, December 6th deadline shall be extended automatically to a date and time that is twenty-four (24) hours after the filing and posting of such Notice of Successful Bidder(s); and

- (m) Approves the Disputed Claim Notice, substantially in the form attached to the Disclosure and Solicitation Order as Schedule 5;
- (n) Approves the Plan Confirmation Schedule, including the following dates and deadlines:
 - (i) Voting Record Date of October 9, 2013 for determining (a) which holders of claims or equity interests are entitled to vote on the competing plans and (b) whether claims or equity interests have been properly transferred to an assignee such that the assignee can vote as the holder of the claim or equity interest;
 - (ii) Plan Supplement Date of November 27, 2013, by which plan proponents must file all supplemental documents to their respective competing plans;
 - (iii) Voting Deadline of December 5, 2013 at 4:00 p.m. (prevailing Pacific time), provided, however, that in the event that the Notice of Successful Bidder(s) (as provided in paragraph 15(b) of the Bid Procedures Order) has not been filed with the Court or posted on the Website at least twenty-four (24) hours prior to the Voting Deadline, the Voting Deadline shall be extended automatically to a date and time that is twenty-four (24) hours after the filing and posting of such Notice of Successful Bidder(s);

- (iv) Plan Objection Deadline of November 26, 2013 at 4:00 p.m. (prevailing Eastern time) by which any objection to any of the competing plans must be filed and served;
- (v) Objections to the Chapter 11 Debtors' selection of the highest and otherwise best bid must be filed by December 6, 2013 at 11:59 p.m. (prevailing Eastern time); provided, however, that in the event that the Notice of Successful Bidder(s) (as provided in paragraph 15(b) of the Bid Procedures Order) has not been filed with the Court or posted on the Website at least twenty-four (24) hours prior the deadline, the deadline shall be extended automatically to a date and time that is twenty-four (24) hours after the filing and posting of such Notice of Successful Bidder(s);
- (vi) The deadline for parties to file briefs in support of confirmation of the competing plans shall be December 3, 2013 at 4:00 p.m. (prevailing Eastern time); provided, however, that the plan proponents may file briefs in response only to the Supplemental Objections (as defined in the Disclosure and Solicitation Order) by December 9, 2013 at 8:00 a.m. (prevailing Eastern time); and
- (vii) The Confirmation Hearing shall be held on December 10, 2013 at 10:00 a.m. (prevailing Eastern time), which hearing may be continued from time to time by the U.S. Bankruptcy Court without further notice other than by such adjournment being announced in open court or by a notice of adjournment filed with the U.S. Bankruptcy Court and served in accordance with the Case Management Order.

28. The Foreign Representative is of the view that the Canadian Court should recognize the Disclosure and Solicitation Order, as:

- (a) The General Disclosure Statement provides, among other things, information on (i) the history of the Chapter 11 Debtors, (ii) the Chapter 11 Debtors businesses, operations, and capital structure, (iii) events leading up to the Chapter 11 Cases and the Canadian Proceedings, and (iv) significant events occurring in the Chapter 11 Cases;

- (b) The Specific Disclosure Statements provide information specific to the respective competing plans, including, among other things, (i) the terms, provisions, and implications of the competing plans, and (ii) the holders of claims against, and equity interests in, the Chapter 11 Debtors and their rights under the competing plans;
- (c) The Disclosure Statements comply with the requirements of the Bankruptcy Code by providing “adequate information” on the Chapter 11 Debtors, the Chapter 11 Cases and the competing plans and by conspicuously describing the conduct and parties enjoined by the competing plans;
- (d) The Disclosure Statements provide more than adequate information regarding the Chapter 11 Debtors, the Chapter 11 Cases and the competing plans, to enable the relevant parties to make informed decisions regarding how to vote on competing plans;
- (e) The Claims Procedure Order granted by the U.S. Bankruptcy Court on August 12, 2012 and recognized by the Canadian Court on August 21, 2012, contemplated and included Canadian creditors;
- (f) Pursuant to the Claims Procedure Order, known creditors were provided with notice of the claims procedure and notice of the process was published in various publications, including *The Globe and Mail (National Edition)*;
- (g) The Information Officer also posted details of the claims process on its webpage with links to the proof of claim form and instructions for the filing of same;
- (h) Canadian creditors were therefore given adequate and equal opportunity to participate in the claims process and in turn become entitled to vote in the solicitation process;


- (i) The Solicitation Procedures are directed to all creditors, including Canadian creditors, and there is no differentiation among the creditor classes for Canadian creditors vs. non-Canadian creditors;
- (j) The Solicitation Procedures are tailored to allow for the solicitation of votes on competing plans as effectively and efficiently as possible, while minimizing creditor confusion, duplication of effort and expenditure of resources;
- (k) The Solicitation Procedures provide all holders of claims and equity interests with adequate notice of the solicitation process and the relevant dates;
- (l) The Solicitation Procedures provide all holders of claims or equity interests entitled to vote on any of the competing plans with the requisite materials and sufficient time to make an informed decision with respect to each competing plan;
- (m) The Solicitation Procedures reflect the substantial input of the various plan proponents;
- (n) The Solicitation Procedures are fair and appropriate; and
- (o) The Solicitation Procedures are administratively efficient and cost effective for the courts and the debtor estates.

29. To my knowledge, no party has appealed the Disclosure and Solicitation Order in the Chapter 11 Cases, and the secured creditors registered against the Canadian Chapter 11 Debtor entities are being given notice of the motion and the Disclosure and Solicitation Order.

30. Pursuant to the foregoing reasons, the Foreign Representative is requesting that the Canadian Court recognize in Canada and enforce the Disclosure and Solicitation Order, pursuant to Section 49 of the CCAA.

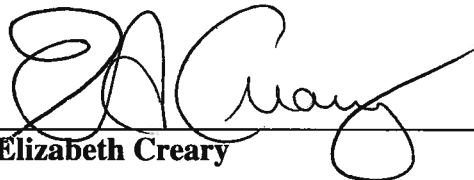
31. I make this affidavit in support of the motion of the Foreign Representative returnable October 17, 2013 and for no other or improper purpose.

SWORN before me in the City of Ottawa
in the Province of Ontario this 10th day of
October, 2013



Commissioner for Taking Affidavits, etc.

Sandra Diana Wendy Kleinert,
a Commissioner, etc., Province of Ontario
for Dentons Canada LLP
Barristers and Solicitors. Expires June 7, 2016

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Elizabeth Creary
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STATES BANKRUPTCY COURT WITH RESPECT TO THE CHAPTER 11 DEBTORS

ONTARIO

SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT TORONTO

AFFIDAVIT OF ELIZABETH CREARY
(Sworn October 10, 2013)

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