Hearing Date: July 18, 2011 at 10:00 a.m. (prevailing Eastern time)
Objection Deadline: July 11, 2011 at 5:00 p.m. (prevailing Eastern time)

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United States Bankruptcy Court
Southern District Of New York

In re:	Chapter 11
TerreStar Networks Inc., *et al.*,[1]	Case No. 10-15446 (SHL)
Debtors.	Jointly Administered

NOTICE OF HEARING ON MOTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS FOR ENTRY OF AN ORDER RE-CHARACTERIZING THE CLAIM OF TERRESTAR CORPORATION AS AN EQUITY CONTRIBUTION TO TERRESTAR NETWORKS INC.

PLEASE TAKE NOTICE that on June 17, 2011, the Official Committee of Unsecured Creditors of TerreStar Networks Inc. filed the *Motion of the Official Committee of Unsecured Creditors for Entry of an Order Re-Characterizing the Claim of TerreStar Corporation as an Equity Contribution to TerreStar Networks Inc.* (the "***Motion***").

PLEASE TAKE FURTHER NOTICE that a hearing (the "*Hearing*") to consider the Motion shall be held before the Honorable Sean H. Lane, United States Bankruptcy Judge, at the United States Bankruptcy Court, located at the Alexander Hamilton Custom House, One Bowling Green, New York, New York 10004, in a room to be determined on at a future date, on July 18, 2011 at 10:00 a.m. (prevailing Eastern time).

PLEASE TAKE FURTHER NOTICE that any responses to the Motion must be in writing, shall conform to the Federal Rules of Bankruptcy Procedure and the Local Rules of the Bankruptcy Court, and the court's *Order Pursuant to Sections 105(a) and (d) of the Bankruptcy Code and*

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

Bankruptcy Rules 1015(c), 2002(m) and 9007 Implementing Certain Notice and Case Management Procedures (Docket No. 60) (the "***Case Management Order***"), and shall be filed with the Bankruptcy Court (a) electronically in accordance with General Order M-399 (which can be found at http://www.nysb.uscourts.gov) by registered users of the Bankruptcy Court's filing system, or (b) by all other parties in interest, on a 3.5 inch disk, preferably in Portable Document Format (PDF), WordPerfect, or any other Windows-based word processing format (with a hard copy delivered directly to Chambers), in accordance with General Order M-182 (which can be found at http://www.nysb.uscourts.gov), and served in accordance with General Order M-399, on (a) counsel to the Debtors, Akin Gump Strauss Hauer & Feld LLP, One Bryant Park, New York, New York 10036, Attn: Ira S. Dizengoff, Esq. and Arik Preis, Esq.; (b) the Office of the United States Trustee for the Southern District of New York, 33 Whitehall Street, 21st Floor, New York, New York 10004, Attn: Susan Golden, Trial Attorney; (c) Otterbourg, Steindler, Houston & Rosen, P.C., as counsel to the statutory committee of unsecured creditors appointed in these chapter 11 cases; (d) Bank of New York Mellon as agent for the Debtors' postpetition debtor-in-possession financing; (e) Emmet, Marvin & Martin, LLP as counsel to the agent for the Debtors' postpetition debtor-in-possession financing; (f) U.S. Bank National Association as Collateral Agent for the Debtors' purchase money credit facility; (g) Weil, Gotshal & Manges LLP as counsel to Harbinger Capital Partners Master Fund I, Ltd. and Harbinger Capital Partners Special Situations Fund, L.P.; (h) Willkie Farr & Gallagher LLP as counsel to EchoStar Corporation in its capacity as Lender under the Debtors' purchase money credit facility and Initial Lender under the Debtors' postpetition debtor-in-possession financing; (i) U.S. Bank National Association as Indenture Trustee for the Debtors' 15% Senior Secured Notes and Kelley Drye & Warren LLP as counsel to the Indenture Trustee; (j) Deutsche Bank National Trust Company as Indenture Trustee for the Debtors' 6.5% Senior Exchangeable Notes and Foley & Lardner LLP as counsel to the Indenture Trustee; (k) Quinn Emanuel Urquhart & Sullivan, LLP as counsel to certain holders of the Debtors' 6.5% Senior Exchangeable Notes; (l) the Internal Revenue Service; (m) the Securities and Exchange Commission; (n) the United States Attorney for the Southern District of New York; (o) the Federal Communications Commission; (p) Kirkland & Ellis LLP, as counsel to certain holders of the Debtors' 15% Senior Secured Notes; and (q) parties in interest who have filed a notice of appearance in these cases pursuant to Bankruptcy Rule 2002, in each case so as to be received no later than **July 11, 2011 at 5:00 p.m. (prevailing Eastern Time)** (the "***Response Deadline***").

PLEASE TAKE FURTHER NOTICE that if no responses with respect to the Motion are timely filed and served in accordance with the Case Management Order, the Committee may, on or after the Response Deadline, submit to the Bankruptcy Court an order substantially in the form of the proposed order annexed to the Motion, which order may be entered with no further notice or opportunity to be heard offered to any party.

Dated: June 17, 2011
New York, New York

Respectfully submitted,

OTTERBOURG, STEINDLER, HOUSTON & ROSEN, P.C.

/s/ David M. Posner

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Counsel to the Official Committee of Unsecured Creditors

Hearing Date: July 18, 2011 at 10:00 a.m. (prevailing Eastern time)
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United States Bankruptcy Court
Southern District Of New York

In re:	Chapter 11
TerreStar Networks Inc., *et al.*,[1]	Case No. 10-15446 (SHL)
Debtors.	Jointly Administered

MOTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS FOR ENTRY OF AN ORDER RE-CHARACTERIZING THE CLAIM OF TERRESTAR CORPORATION AS AN EQUITY CONTRIBUTION TO TERRESTAR NETWORKS INC.

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

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The Official Committee of Unsecured Creditors (the "**Committee**") of TerreStar Networks Inc., et al. (collectively, the "**Debtors**"), by its counsel, Otterbourg, Steindler, Houston & Rosen, P.C. ("**OSH&R**"), submits this motion (the "**Motion**") for entry of an order re-characterizing the $56,875,342 claim of TerreStar Corporation against TerreStar Networks Inc. (the "**Intercompany Claim**") as an equity contribution. In support of this Motion, the Committee respectfully represents and alleges the following:

PRELIMINARY STATEMENT

1. A bankruptcy court's equitable powers have long included the ability to look beyond the form of a transaction and determine its true substance in order to carry out the Bankruptcy Code's priority scheme for the distribution of a debtor's assets. To effectuate the Bankruptcy Code's priority scheme, bankruptcy courts must have the authority to determine whether a particular obligation is debt or equity. This authority is carried out by a Bankruptcy Court's ability to re-characterize what is ostensibly debt as equity. If, however, a court were required to accept the representations of a claimant, then an equity investor could label its contribution as a loan and assure itself of higher priority and a larger recovery, should the debtor file for bankruptcy. Indeed, that is precisely what TerreStar Corporation ("**TSC**"), the parent corporation of TerreStar Networks Inc. ("**TSN**"), has attempted to do with the $50 million in funding it provided to TSN approximately one year prior to TSN's Petition Date.

2. Over the course of four months in 2009, TSC provided TSN with $50 million to finance insurance premiums related to one of TSN's capital assets - TerreStar-1 ("**TS-1**"), the Debtors' in-orbit satellite. The "debt", which took the form of five notes in the amount of $10 million each, was advanced to TSN at a time when: (a) there was substantial doubt that TSN's available cash balance and available borrowing capacity as of December 31, 2009 would

be sufficient to satisfy projected funding needs for 2010; and (b) TSN was uncertain as to its ability to secure financing on favorable terms, if at all. Despite the going concern warning provided by Ernst & Young LLP ("**E&Y**"), TSN's independent auditor, and TSN's negative book value, history of unprofitability and dismal economic outlook, TSC advanced TSN $50 million without taking a security interest in any of TSN's assets. Then, in an attempt to subvert the priority scheme set forth in the Bankruptcy Code, TSC camouflaged its equity contribution as an intercompany loan.

3. Despite the labels affixed to the "loan" documents themselves, the facts and circumstances of this transaction require the re-characterization of the Intercompany Claim from debt to equity. Furthermore, and perhaps even more suggestive of the true nature of this transaction, is the fact that it was not uncommon for TSC to provide TSN with equity infusions. In fact, in 2008 -- just one year prior to TSC's $50 million advance -- TSC provided TSN with $48.5 million in exchange for shares of TSN's common stock. While these two transactions were similar in many respects - one fact remains glaringly different: the $48.5 million is properly scheduled to be re-characterized as an equity contribution and,[2] thus far, the $50 million has not.

4. As discussed in greater detail below, the treatment of the Intercompany Claim as a loan warrants the exercise of the Court's equitable powers to re-characterize this purported loan to reflect its economic reality - an equity contribution from a parent corporation to its financially troubled subsidiary. If the Intercompany Claim is re-characterized as an equity

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[2] [redacted]
In light of such re-characterization, TSN's Schedule of Assets and Liabilities does not schedule the $48.5 million intercompany payable.

contribution, which would be consistent with the characterization of TSC's prior and similar $48.5 million advance and is otherwise warranted as set forth below, unsecured creditors will realize greater recoveries because their claims will not be diluted by those of the Debtors' parent corporation.

5. Accordingly, the Committee respectfully submits that the Court exercise its equitable powers to re-characterize the Intercompany Claim as an equity contribution to preserve the Bankruptcy Code's priority schematic and ensure that the claims of all unsecured creditors are satisfied before TSC's equity interests.

JURISDICTION

6. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

7. Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

BACKGROUND

8. On October 19, 2010 (the "**Petition Date**"), the Debtors each filed voluntary petitions for reorganization under Chapter 11 of Title 11 of the United States Code (the "**Bankruptcy Code**"). This Court has entered an order directing joint administration of the Debtors' cases. The Debtors continue to operate their businesses and manage their properties as debtors-in-possession pursuant to Bankruptcy Code sections 1107(a) and 1108. No trustee or examiner has been appointed in the Debtors' cases.

9. On October 29, 2010, the United States Trustee for the Southern District of New York appointed the Committee pursuant to Bankruptcy Code section 1102(a)(1).[3] The

[3] The Committee is currently composed of the following members: Space Systems/Loral Inc., Deutsche Bank National Trust Company, Hughes Network Systems, LLC, QUALCOMM Incorporated, Shaffer Wilson Sarver

Committee selected OSH&R to serve as its counsel and FTI Consulting, Inc. to serve as its financial advisors.

STATEMENT OF FACTS

10. During 2008, TSC, the Debtors' parent corporation, provided $45,800,000 in funding to TSN in exchange for shares of TSN's common stock (the "**2008 Agreement**"). According to TSN's consolidated financial statements for the years ended December 31, 2009 and 2008 (the "**Financial Statements**"), which is attached as Exhibit A, [redacted].[4] Financial Statements at 22. The Financial Statements describe the 2008 Agreement as follows:

[redacted]

11. In 2009, less than one year later, TSC provided a further $50,000,000 in funding to TSN in exchange for promissory notes that are due in 2014 (the "**2009 Agreement**"). The funding under 2009 Agreement was comprised of five separate promissory notes, each in the amount of $10,000,000 and each which bear a fixed interest rate of 15% per year (collectively,

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& Gray, P.C., and Van Vlissingen and Company. Nokia Siemens Networks US LLC resigned from the Committee effective as of February 22, 2011.

[4] [redacted] Furthermore, the Debtors have neither a scheduled claim nor, according to the Debtors' claims register, a filed claim, on account of the 2008 Agreement.

the "**Notes**").[5] The Notes, which were issued at a time when TSN's total liabilities exceeded its total assets and after E&Y had already issued a going concern warning:[6] (a) are not secured by any of TSN's assets; (b) do not provide a schedule for the repayment of principal or interest (instead, the principal and all accrued and unpaid interest is due, in full, on stated maturity dates); and (c) were to be used to finance insurance premiums related to one of TSN's capital assets, TS-1. However, [redacted]

12. As a result of the 2009 Agreement, TSC is scheduled as an unsecured claimant against TSN in the amount of $56,875,342, and its claim, to the extent allowed, will dilute the recoveries that will be realized by unsecured creditors in these Chapter 11 cases.

13. Pursuant to a stipulation between certain of the Debtors and certain holders of TSC's Series B Preferred Stock dated as of November 12, 2010 (the "**Stipulation**") [Docket No. 159], the Intercompany Claim has been deemed an allowed claim held by TSC against TSN. That Stipulation, however, expressly reserves the Committee's right to bring any claim or cause of action against or make any motion or objection with respect to, among other things, the Intercompany Claim.

14. On November 23, 2010, this Court entered an order approving the Stipulation (the "**Stipulation Order**") [Docket No. 199].

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[5] TSC issued TSN the Notes on June 8, 2009, July 6, 2009, August 4, 2009, August 26, 2009 and September 21, 2009. The Notes' maturity dates are: June 8, 2014, June 6, 2014, August 4, 2014, August 26, 2014 and September 21, 2014, respectively.

[6] [redacted]

OBJECTION AND ARGUMENT

I. THE INTERCOMPANY CLAIM SHOULD BE RE-CHARACTERIZED AS AN EQUITY CONTRIBUTION FROM TSC TO TSN

15. While the Bankruptcy Code does not expressly provide for the re-characterization of debt to equity, the majority of bankruptcy courts, including bankruptcy courts in this circuit, have determined that they have the power to re-characterize what is ostensibly debt based on their equitable authority under Bankruptcy Code section 105. See Official Comm. of Unsecured Creditors of Adelphia Commc'ns Corp. v. Bank of America, N.A., et al. (In re Adelphia Commc'ns Corp.), 365 B.R. 24, 74 n.209 (Bankr. S.D.N.Y. 2007) ("[t]he court rejects the contention . . . that bankruptcy courts lack authority to re-characterize debt as equity"). See, e.g., Official Comm. of Unsecured Creditors v. Bay Harbour Master Ltd. (In re BH S & B Holdings LLC, et al.), 420 B.R. 112 (Bankr. S.D.N.Y. 2009); Algonquin Power Income Fund v. Ridgewood Heights, Inc. (In re Franklin Indus. Complex, Inc.), No. 01-67459, Adv. No. 06-80254, 2007 WL 2509709 (Bankr. N.D.N.Y. Aug. 30, 2007); Official Unsecured Creditors' Comm. of Broadstripe LLC v. Highland Capital Mgmt., L.P., et al., (In re Broadstripe LLC, et al.), No. 09-10006, Adv. No. 09-50966, 2010 WL 3768003 (Bankr. D. Del. Sept. 2, 2010); In re Cold Harbor Assocs., L.P., 204 B.R. 904 (Bankr. E.D. Va. 1997); In re SubMicron Sys. Corp., 291 B.R. 314 (Bankr. D. Del. 2003); Fairchild Dornier GMBH v. Official Comm. of Unsecured Creditors (In re Official Comm. of Unsecured Creditors for Dornier Aviation (N. Am.), Inc.), 453 F.3d 225 (4th Cir. 2006); In re AutoStyle Plastics, Inc., 269 F.3d 726 (6th Cir. 2001).

16. Under the majority view, a bankruptcy court is "not required to accept the label of 'debt' or 'equity' placed by the debtor upon a particular transaction, but must inquire into the actual nature of the transaction to determine how to characterize it." In re Cold Harbor Assocs., 204 B.R. at 915. In other words, when presented with such a request, a court is

permitted to scrutinize a transaction "according to an objective test of economic reality to determine its true economic nature." In re SubMicron Sys. Corp., 291 B.R. at 323.

17. If the transaction, although "cast in the form of a loan[,]" nevertheless has the "substance and character of an equity contribution[,]" then the court may re-characterize the transaction as an equity contribution. Acquino v. Black (In re Atlantic Rancher, Inc.), 279 B.R. 411, 437 (Bankr. D. Mass. 2002). See also In re AutoStyle Plastics, Inc., 269 F.3d at 747-48 (6th Cir. 2001) (quoting In re Cold Harbor Assocs., L.P., 204 B.R. at 915) ("[r]echaracterization is appropriate where the circumstances show that a debt transaction was actually [an] equity contribution [] *ab initio*.").

18. Courts consider various factors when determining whether a debt should be re-characterized. As articulated by the Sixth Circuit Court of Appeals in In re AutoStyle Plastics, Inc., these factors, which are commonly known as the "AutoStyle factors", include: (a) the labels given to the debt; (b) the presence or absence of a fixed maturity date and schedule of payments; (c) the presence or absence of a fixed interest rate and schedule of payments; (d) the source of repayments; (e) whether the borrower is adequately capitalized; (f) any identity of interest between the creditor and the stockholder; (g) whether the loan is secured; (h) the borrower's ability to obtain financing from outside lending institutions; (i) the extent to which the advances were subordinate to the claims of outside creditors; (j) the extent to which the advances were used to acquire capital assets; and (k) the presence or absence of a sinking fund to provide repayments. 269 F.3d at 749-50. See also In re BH S & B Holdings LLC, et al., 420 B.R. at 158 (utilizing the AutoStyle factors in a re-characterization action in the Bankruptcy Court for the Southern District of New York). No single factor is controlling. In re AutoStyle

Plastics, Inc., 269 F.3d at 750. Instead, the AutoStyle factors are considered within the particular circumstances of each case. Id.

19. As discussed below, the circumstances of this case can only lead to one logical conclusion: the funds advanced by TSC under the 2009 Agreement are nothing more than an equity contribution operating under the guise of an intercompany loan.

A. The *AutoStyle* Factors Weigh in Favor of Re-characterizing the Intercompany Claim as an Equity Contribution

20. "[T]he paradigmatic situation for re-characterization [is] where the same individuals or entities (or affiliates of such) control both the transferor and the transferee, and inferences can be drawn that funds were put into an enterprise with little or no expectation that they would be paid back along with other creditor claims." In re Adelphia Commc'ns Corp., 365 B.R. at 74. The present case -- which involves a parent corporation whose entire board of directors also sits on the board of its Debtor subsidiary and whose assets have been often transferred to its Debtor subsidiary -- presents just such a paradigmatic situation.

21. One of the most telling of the AutoStyle factors is TSN's severe undercapitalization at the time of the 2009 Agreement. As the AutoStyle court succinctly articulated, thin or inadequate capitalization is strong evidence that advances are capital contributions rather than loans. In re AutoStyle Plastics, 269 F.3d at 751. In fact, when a corporation is undercapitalized, a court is more skeptical of purported loans made to it because they may in reality be infusions of capital. Id. at 747.

22. Here, it is abundantly clear that at the time the 2009 Agreement was consummated, TSN had negative book value and was in dire need of funding. This was reflected in, among other things, public filings with the Securities Exchange Commission and the Financial Statements. [redacted]

[redacted][7] Furthermore, [redacted]

These facts clearly demonstrate that at the time of the 2009 Agreement, TSN was a deeply undercapitalized entity that was in dire need of an equity infusion.

23. Another AutoStyle factor supporting the re-characterization of the Intercompany Claim is the fact that around the time TSN entered into the 2009 Agreement, TSN's ability to obtain financing from outside lending institutions was highly uncertain. According to the Financial Statements, TSN could not guarantee that financing would be available on favorable terms, if at all. This language is recited in both the Report of Independent Auditors and the Notes to Consolidated Financial Statements. Financial Statements at 1 and 6.[8] Indeed, "[w]hen there is no evidence of other outside financing, the fact that no reasonable creditor would have acted in the same manner is strong evidence that advances were capital contributions rather than loans." In re AutoStyle Plastics, 269 F.3d at 752.

24. In addition to TSN's precarious state of financial affairs, the characteristics of the Notes themselves also support the re-characterization of the Intercompany Claim. While the purported debt takes the *form* of a "Term Note" bearing interest at a fixed rate of 15% per year, the *substance* of the "debt" portrays an entirely different picture. For example, the absence of a security interest is a strong indication that the advance is an equity contribution

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[7] This exact language also appears in TSC's public filings with the Securities Exchange Commission. See TerreStar Corporation Form 10-K/A dated May 6, 2010 for the fiscal year ended December 31, 2009 ("**TSC 2009 Form 10-K/A**") at 45. The relevant portion of the TSC 2009 Form 10K/A is attached as Exhibit B.

[8] See also TSC 2009 Form 10-K/A at 45.

rather than a loan. See In re AutoStyle Plastics, 269 F.3d at 752. Here, TSC advanced $50 million to TSN over four months without taking a security interest in any of TSN's assets. Any prudent investor in TSC's shoes would have requested a security interest on account of this transaction. The only plausible explanation for TSC not requesting a security interest is that TSC never intended for TSN to repay the amounts owed under the Notes because the Notes were intended to be an equity contribution, not a loan.

25. Another AutoStyle factor weighing in favor of re-characterization is the lack of any repayment schedule for the Notes. While the Notes have fixed maturity dates in 2014, the Notes do not require the periodic payment of the outstanding principal or interest. Instead, the principal amounts of the Notes are due, in full, on the stated maturity dates. Similarly, there is no repayment schedule for the accrued and unpaid interest, rather, all unpaid interest is due on the stated maturity dates.

26. Certain courts have also determined that when a debt is incurred by an undercapitalized debtor and the prospect for repayment is poor, such an advance is a capital contribution and not a loan. Matter of Transystems, Inc., 569 F.2d 1364, 1369-71 (5th Cir. 1978). As was the case in Transystems, TSN's prospect of repaying TSC was beyond poor, it was non-existent. Id. This notion is supported by TSN's own Financial Statements which detail, among other financial woes, its severe liquidity concerns and the uncertainty of obtaining much needed financing. However, despite TSN's long history of unprofitability, TSC issued TSN five $10 million notes at a time when TSN's total liabilities exceeded its total assets. In light of this dismissal economic outlook, it is inconceivable that TSC expected TSN to repay the amounts owed under the Notes. Not only do the Financial Statements demonstrate this, but TSC, as TSN's parent corporation and controlling shareholder, was likely well aware of TSN's inability

to repay. See Id. at 1369 (stating a parent corporation must have been aware that the chance of repayment on a loan was "unconscionably low" when the subsidiary was in bad financial shape and unable to procure financing).

27. Yet another factor that weighs in favor of re-characterizing the Intercompany Claim as equity is the fact that TSC, as TSN's parent corporation, is an insider pursuant to Bankruptcy Code section 101(31). In In re Official Comm. of Unsecured Creditors for Dornier Aviation (N. Am.), Inc., where the Fourth Circuit Court of Appeals affirmed the bankruptcy court's decision to re-characterize a $146 million claim, the claimant was the chapter 11 debtor's parent corporation. 453 F.3d at 229. In supporting the bankruptcy court's decision to re-characterize the parent corporation's claim as equity, the Fourth Circuit found that the claimant's insider status was "particularly significant." Id. at 234. Similarly, in Matter of Transystems, Inc., the Fifth Circuit Court of Appeals determined that funds advanced by a parent corporation to its bankrupt subsidiary warranted re-characterization from debt to equity because, among other things, the parent corporation was involved in the subsidiary's management. 569 F.3d at 1370.

28. In TSN's case, [redacted] In fact, not only is TSC the controlling stockholder of TSN, but the Financial Statements refer to TSC's interest in TSN as an "investment". Id. Moreover, at the time of the 2009 Agreement, there was a *complete overlap* between the board members of TSC and TSN. The Committee submits that as in Dornier Aviation and Matter of Transystems, Inc.,

[9] [redacted]

TSC's insider status as a parent corporation supports the re-characterization of the Intercompany Claim.

29. Courts will also consider how the proceeds from the transfer were used in determining whether to re-characterize a claim as equity. In re AutoStyle Plastics, 269 F.3d at 752. In In re AutoStyle Plastics, the Court found that the use of advances to meet the daily operating needs of the corporation rather than to purchase capital assets is indicative of bona fide indebtedness. Id. Here, however, the proceeds from the Notes were not used to meet the Debtors' daily operating needs. Instead, the Notes provide that the funds were advanced for the purpose of maintaining requisite insurance for one of the Debtors' most valuable capital assets, TS-1.

30. Finally, the "source of repayments" factor also weighs in favor of re-characterizing the Intercompany Claim as an equity contribution. According to In re AutoStyle Plastics, if the expectation of repayment depends solely on the success of the borrower's business, the transaction has the appearance of an equity contribution. Id. at 751. Here, the source of repayment depends on TSN's future success because [redacted] that at the time of the 2009 Agreement, TSN did not have the financial wherewithal to repay TSC.[10] In fact, in discussing [redacted] Furthermore, the Notes themselves support the notion that TSN's ability to repay depends on its future success because they contemplate the full payment of principal and interest five years from the date the Notes were executed. The fact that

[10] [redacted]

TSC did not take a security interest in any of TSN's assets on account of the 2009 Agreement also demonstrates that the likelihood of repaying TSC, if any, entirely depends on TSN's future profitability. Indeed, the hope of payment out of future profits is exactly what characterizes an equity investor. In re Official Comm. of Unsecured Creditors for Dornier Aviation (N. Am.), Inc., No. 02-82003, Adv. No. 02-8199, 2005 WL 4781236 (Bankr. E.D. Va. Feb. 8, 2005).

31. The totality of these facts and circumstances reveal the economic reality of the 2009 Agreement: the funds that TSC advanced to TSN under the 2009 Agreement were not a loan, but rather a much needed equity contribution to enable TSN to address its severe liquidity concerns. To conclude that TSC had created a loan at a time when it was well aware of the urgent need of its own subsidiary for working capital would effectively provide TSC with an undue advantage over TSN's unsecured creditors. See Matter of Transystems, Inc., 569 F.2d at 1370 - 71.

B. The Funds Advanced Under the 2009 Agreement Should be Characterized Like the Funds Advanced under the 2008 Agreement

32. In addition to the AutoStyle factors described above, another glaring fact that calls the characterization of the Intercompany Claim into question is the treatment of the funds advanced from TSC to TSN under the 2008 Agreement. Despite the fact that the 2008 Agreement and the 2009 Agreement: (a) were consummated less than a year apart; (b) were entered into by the same parties (TSC and TSN); and (c) involved similar amounts of funding ($45.8 million and $50 million), the manner in which the two agreements were recorded in the Debtors' Financial Statements is strikingly different. Whereas [redacted] the funds advanced under the 2009 Agreement do not contemplate such re-characterization.

33. Neither the Financial Statements, nor the preferred instruments that were issued by TSC in 2008, justify characterizing TSC's advance to TSN under the 2009 Agreement as an intercompany loan rather than as "Stockholders (Deficit) Equity".[11] Therefore, not only do the AutoStyle factors warrant the re-characterization of the Intercompany Claim from debt to equity, but TSN's own historical practices support such re-characterization.

RESERVATION OF RIGHTS

34. The Committee hereby reserves the right to amend, modify or supplement this Motion. Moreover, the Committee reserves its right to file additional motions in the future to any and all of TSC's claims on any applicable grounds whatsoever. The Committee further reserves the right to supplement this Motion based on new information, including, but not limited to, information obtained during the course of discovery.

NOTICE

35. The Committee has provided notice of this Motion to: (a) the Office of the United States Trustee for the Southern District of New York; (b) counsel to the Debtors; (c) Bank of New York Mellon as agent for the Debtors' postpetition debtor-in-possession financing; (d) Emmet, Marvin & Martin, LLP as counsel to the agent for the Debtors' postpetition debtor-in-possession financing; (e) U.S. Bank National Association as Collateral Agent for the Debtors' purchase money credit facility; (f) Weil, Gotshal & Manges LLP as counsel to Harbinger Capital Partners Master Fund I, Ltd. and Harbinger Capital Partners Special Situations Fund, L.P.; (g) Willkie Farr & Gallagher LLP as counsel to EchoStar Corporation in its capacity as Lender under the Debtors' purchase money credit facility and Initial Lender under the Debtors' postpetition debtor-in-possession financing; (h) U.S. Bank National Association as Indenture

[11] On February 7, 2008, TSC issued Series C, Series D and Series E preferred stock to, among other entities, EchoStar Corporation and Harbinger Capital Partners Master Fund I, Ltd.

Trustee for the Debtors' 15% Senior Secured Notes and Kelley Drye & Warren LLP as counsel to the Indenture Trustee; (i) Deutsche Bank National Trust Company as Indenture Trustee for the Debtors' 6.5% Senior Exchangeable Notes and Foley & Lardner LLP as counsel to the Indenture Trustee; (j) Quinn Emanuel Urquhart & Sullivan, LLP as counsel to certain holders of the Debtors' 6.5% Senior Exchangeable Notes; (k) the Internal Revenue Service; (l) the Securities and Exchange Commission; (m) the United States Attorney for the Southern District of New York; (n) the Federal Communications Commission; (o) Kirkland & Ellis LLP, as counsel to certain holders of the Debtors' 15% Senior Secured Notes; (p) K&L Gates LLP, as counsel to Sprint Nextel Corporation; and (q) parties in interest who have filed a notice of appearance in these cases pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, the Committee respectfully submits that no further notice is necessary.

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CONCLUSION

36. **WHEREFORE**, for all of the above-stated reasons, the Committee respectfully requests that the Court enter an order substantially in the form attached as Exhibit C: (a) re-characterizing the Intercompany Claim as an equity contribution from TSC to TSN; and (b) granting the Committee such other and further relief as is just and proper.

Dated: June 17, 2011
New York, New York

Respectfully submitted,

OTTERBOURG, STEINDLER, HOUSTON & ROSEN, P.C.

/s/ David M. Posner

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Counsel to the Official Committee of Unsecured Creditors

Exhibit A

To be Filed Under Seal

Exhibit B

Going Concern, Liquidity and Capital Resources

In assessing our liquidity, we analyze our cash, our investments, anticipated revenue streams and our financing, operating and capital expenditure commitments, including preferred stock redemption obligations. Our principal liquidity needs are to satisfy working capital requirements, operating expenses, capital expenditure, debt and preferred stock redemption obligations. Based on our current plans, there is substantial doubt that the available cash balance, investments and available borrowing capacity as of December 31, 2009 will be sufficient to satisfy the projected funding needs for all of 2010. We will likely require additional funding in the second quarter of 2010 unless we are able to extend our obligations and commitments to future periods. We cannot guarantee that financing will be available or available on favorable terms. If we fail to obtain necessary financing on a timely basis, we may be forced to curtail operations or take other actions that will impact our ability to conduct our operations as planned. Our 2009 financial statements do not include any adjustments to reflect the possible future effects on the recoverability and classification of assets and liabilities that may result from this uncertainty.

We are currently considering various alternatives to extend our liquidity and raise capital. We also commenced exchange offers for our outstanding Series A, B and E preferred stock and solicited consents for amendments to the certificate of designations of the Series B Preferred Stock and the indenture governing TerreStar Networks' 6.5% Exchangeable PIK Notes due 2014, as more fully described in Note 18. Subsequent to the filing of the Original Form 10-K, on April 2, 2010, the exchange offers and consent solicitation were terminated because certain conditions precedent had not been satisfied. Further, we are evaluating other potential sources of funding including those described in Note 18.

Our principal sources of liquidity consist of our current cash balances, which includes advances of $30.0 million from our 1.4GHz terrestrial spectrum lease agreement ("Lease Agreement") received in January 2010, investments and credit available through our secured borrowing under TerreStar-2 Purchase Money Credit Agreement ("Credit Agreement"), of which $42.5 million is available as of December 31, 2009 and which is available solely for construction and completion of our second satellite, TerreStar-2. As of December 31, 2009, we had $45.1 million of cash and cash equivalents and $0.5 million of restricted cash. After giving effect to the net proceeds and advances available under the Lease Agreement and Credit Agreement, we have approximately $118.1 million of liquid resources available to fund operations.

Our short-term liquidity needs are principally related to our operating expenses, continuing commitments related to the design and development of our handset and chipset, development of our ground based satellite infrastructure and the potential redemption obligation under our Series A and B Preferred Stock. As of December 31, 2009, we had contractual obligations of $562.2 million due within one year, consisting of approximately $429.9 million related to the redemption of Series A and B Preferred Stock, which will be due on April 15, 2010, $51.5 million related to our satellite system, $0.2 million related to interest or debt obligations, $76.1 million related to our handset, chipset, terrestrial network and orbital incentive payments related to our satellite contract and $4.5 million for operating leases.

Subsequent to the filing of the Original Form 10-K, we did not redeem the Series A and B Preferred Stock on the Redemption Date. Accordingly, due to our failure to redeem, the holders of the Series A Preferred Stock will, in addition to any other rights available, have the right, subject to proper notice as set forth below, voting as a single class with all other parity securities upon which like voting rights have been conferred and are exercisable, to elect two members to our board of directors until all outstanding shares of the Series A Preferred Stock have been redeemed. Similarly, the holders of the Series B Preferred Stock will, in addition to any other rights available, have the right, subject to proper notice as set forth below, voting as a single class with all other parity securities upon which like voting rights have been conferred and are exercisable, to elect a majority of members to our board of directors until all outstanding shares of the Series B Preferred Stock have been redeemed. The board election rights available to the holders of the Series A Preferred Stock and Series B Preferred Stock will become effective, only if our failure to redeem continues for 30 consecutive days following

Exhibit C

Proposed Order

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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

ORDER GRANTING MOTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO RE-CHARACTERIZE THE CLAIM OF TERRESTAR CORPORATION AS AN EQUITY CONTRIBUTION TO TERRESTAR NETWORKS INC.

Upon the motion (the "**Motion**") of the Official Committee of Unsecured Creditors (the "**Committee**") of the above-captioned debtors (collectively, the "**Debtors**") for entry of an order re-characterizing the Intercompany Claim[2] as an equity contribution from TSC to TSN; and it appearing that the relief requested is in the best interests of the Debtors' estates, their creditors and other parties in interest; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and notice of the Motion being adequate and appropriate under the circumstances; and upon the arguments, testimony and/or evidence presented at the hearing before this Court, and any objections to the requested relief having been withdrawn or overruled on the merits; and after due deliberation and sufficient cause appearing therefor, it is **HEREBY ORDERED** that:

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

[2] Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

1. The Motion is granted in its entirety to the extent set forth herein.

2. The Intercompany Claim is hereby re-characterized as an equity contribution from TSC to TSN.

3. The terms and conditions of this Order shall supersede those of the Stipulation Order as it relates to the Intercompany Claim being deemed an allowed, undisputed and non-contingent claim in the Debtors' cases, *provided, however*, that all other terms and conditions of the Stipulation Order shall remain in full force and effect.

4. The Committee has expressly reserved its right to file additional motions or pleadings to any and all of TSC's claims pursuant to this Order on any other applicable grounds whatsoever at a later date.

5. The person responsible for maintaining the claims register in these chapter 11 cases is authorized to cause the claims register to be amended to reflect the terms of this Order.

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

7. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

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

New York, New York
Date: _____, 2011

Honorable Sean H. Lane
United States Bankruptcy Judge