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March 22, 2004

Carl R. Frank
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VIA ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: **NOTICE OF EX PARTE PRESENTATION**
Amendment of the Commission's Space Station Licensing Rules and Policies,
IB Docket No. 02-34; 2000 Biennial Regulatory Review - Streamlining and
Other Revisions of Part 25 of the Commission's Rules, IB Docket No. 00-
248

Dear Ms. Dortch:

Please find attached an ex parte presentation submitted by Intelsat LLC discussing the use of Escrow Agreements as an alternative to the Commission's newly imposed bond requirement for satellite applications. This presentation is being submitted in response to the International Bureau's request for additional information at its open meeting on February 9, 2004. If you have any questions, please do not hesitate to contact the undersigned.

Sincerely,

/s/ Carl R. Frank

Carl R. Frank
Counsel for Intelsat LLC
Att.

cc (via email): Roderick K. Porter
Thomas S. Tycz
Fern Jarmulnek
Steven Spaeth
Andrea Kelly
Marilyn Simon
Jacki Ponti



Wiley Rein & Fielding LLP

MEMORANDUM

TO: Intelsat
FROM: Carl R. Frank
DATE: March 16, 2004
RE: Escrow Agreements for Milestone Payments

INTRODUCTION AND SUMMARY

The FCC is examining permitting satellite licensees to use an escrow account, as an alternative to a bond, as a guarantee of milestones. In doing so, the Commission must eliminate or minimize any risk that it will be prohibited by the Bankruptcy Code's automatic stay from requiring the forfeiture of escrowed funds in the event a bankrupt licensee misses a milestone. An irrevocable escrow account in which the FCC possesses a security interest will help to secure payment to the FCC when a licensee misses a milestone and files for bankruptcy. While it is not possible to entirely "bankruptcy proof" the transaction or the money placed in escrow by the licensee, the escrow may be structured in a way that will protect the FCC's rights to the greatest extent possible. This memorandum discusses this structure and other relevant points.

Upon the filing of a bankruptcy petition, the automatic stay protects the property of the debtor's estate. Therefore, the proposed escrow agreement must limit the licensee's interest in and control over the funds so as to isolate them to the extent possible from the bankruptcy estate and the jurisdiction of the bankruptcy court.

In addition, the licensee should be required to grant the FCC a security interest in any property interest the licensee retains in the escrow and the funds therein. If the FCC has such a perfected security interest, even if the bankruptcy court were to find that the funds in escrow were within the ambit of the bankruptcy estate, the FCC would be a lien creditor and entitled to payment.

We have attached sample escrow and security agreements to illustrate our recommendations.

DISCUSSION

Automatic Stay:

- Section 362(a)(3) of the Bankruptcy Code automatically stays "any act to obtain possession of property of the estate or of property from the estate or to exercise

control over property of the estate” as well as “any act to create, perfect, or enforce any lien against property of the estate.”

- By its terms, § 362(a)(1) only applies to property of the estate. So it is critical that the funds held in escrow are not deemed property of the estate.
- Whether an item is property of the estate is determined at the time of the petition placing the debtor in bankruptcy.
- Under § 541(d), where the debtor’s only interest in property is bare legal title to property, only that legal title and not the equitable interest is property of the estate and therefore subject to the automatic stay.

Equitable powers of the Bankruptcy Court:

- Section 105 of the Bankruptcy Code provides the Court with certain equitable powers.
- Many courts hold that these powers are limited. *In re Lloyd*, 37 F.3d 271, 275 (7th Cir. 1994).
- Other Courts have interpreted § 105(a) as a broad grant to take whatever action is deemed necessary to facilitate the administration of the case. *In re Master Mortgage Inv. Fund, Inc.*, 168 B.R. 930, 936 (Bankr. W.D. Mo. 1994). Thus, they will use the provisions of § 105(a) to enjoin actions, including those against non-estate property and actions in another forum, that are perceived as having a possible adverse affect on the debtor’s ability to formulate a reorganization plan. *Monarch Life Ins. Co. v. Ropes & Gray (In re Monarch Capital Corp.)*, 173 B.R. 31, 42 (D. Mass. 1994), *aff’d*, 65 F.3d 973 (1st Cir. 1995).
- Accordingly, there is a risk that the Bankruptcy Court could freeze or enjoin the transfer of funds held in the escrow account under § 105 no matter what the language in the agreement.

In structuring an escrow account to secure completion of milestones, the following considerations may be important:

- As noted above, an escrow must be structured to limit the risk of a finding that the escrowed funds or any interest therein is property of the estate under § 541 of the Bankruptcy Code because, generally, only estate property is impacted by the bankruptcy filing.
- In determining whether an escrow account is property of the debtor's estate, the nature and circumstances of the escrow agreement control. *Holmes Envtl., Inc. v. Suntrust Banks, Inc. (In re Holmes Envtl., Inc.)*, 287 B.R. 363, 375 (Bankr. E.D. Va. 2002); *O’Neil v. Shipman (In re Pratt and Whitney, Inc.)*, 143 B.R. 19, 22 (Bankr. D.Conn. 1992).

- Factors relevant to a determination of the debtor's interest in escrowed funds include the following:
 - whether the debtor initiated and/or agreed to the creation of the escrow;
 - what, if any, control the debtor exercises over the escrow;
 - the nature of the funds put into the account;
 - the source of the account/funds;
 - the recipient of any remaining funds;
 - the target of the escrow's benefit;
 - the purpose of the escrow account.

See Holmes, 287 B.R. at 375-76 (citations omitted).

- Where the purpose of an escrow agreement is to act as an assurance or guarantee of performance, courts have generally found that the funds are not property of the estate. *See Cedar Rapids Meats, Inc. v. Hager (In re Cedar Rapids Meats, Inc.)*, 121 B.R. 562, 566 (Bankr. N.D. Iowa 1990); *In re Dolphin Titan Int'l Inc.*, 93 B.R. 508, 511-12 (Bankr. S.D. Tex. 1988) (monies placed in an escrow fund to assure payment of worker's compensation claims was not estate property); *In re Palm Beach Heights Dev. & Sales Corp.*, 52 B.R. 181, 183 (Bankr. S.D. Fla. 1985) (monies placed by debtor in an escrow fund to guarantee the debtor would complete certain drainage and road improvement work was not property of the bankrupt estate); *In re Creative Data Forms, Inc.*, 41 B.R. 334, 336-37 (Bankr. E.D. Pa. 1984).
- The purpose of an escrow agreement related to FCC satellite licensing/construction milestones could properly be characterized as one to guarantee performance under the relevant license.
- If structured properly, once the licensee places funds into such an escrow account, it should lose equitable title to those funds. Thus, some courts look at the escrow agreement as a type of express trust which is excluded from property of the estate since the debtor maintains, if anything, only bare legal title, rather than an equitable interest, and unless and until certain conditions are met, the debtor cannot access the money. *Holmes* at 374-81; *Old Republic Nat'l Title Ins. Co. v. Tyler (In re Dameron)*, 155 F.3d 718, 721 (4th Cir. 1998) (funds held by attorney/debtor for disbursements to third parties at real estate closings were held in trust and excluded from bankruptcy estate).
- Note that, in bankruptcy, the debtor is not allowed to make any payments that became due prior to the petition date absent an order from the court. In addition, the debtor may not make any post-petition payments that are outside of the ordinary course of business. Thus, the timing of the release of escrowed funds would be important if the

funds were deemed property of the estate. However, if the escrow is structured so as to prevent a finding that the funds held are property of the estate, post-petition transfers from the escrow to the FCC should be permissible. *See Holmes* at 387-88 (rejecting *Gassen v. Universal Bldg. Materials, Inc. (In re Berkley Multi-Units, Inc.)*, 69 B.R. 638 (Bankr. M.D. Fla. 1987) as factually distinguishable).

Avoidance Powers:

- Note further that, in bankruptcy, the trustee or debtor-in-possession has the power to avoid (*i.e.*, recover) certain transfers, including the grant of security interests.
- The debtor's ability to avoid a transfer would not depend on whether an escrow or bond was used to secure payment to the FCC.
- The FCC would likely have certain defenses to any action to avoid the transfer of funds into the escrow account. For example, the transfer may be deemed not to have been on account of an antecedent debt (a requirement for any preference action) or the FCC may have provided new value to the debtor through the grant of the license (an affirmative defense to a preference action).

Accordingly, we recommend that the escrow agreement contain the following provisions/language:

- Funds cannot be disbursed to licensee without FCC (a) certification that milestone has been achieved and (b) express authorization to escrow agent to pay funds to licensee.
 - No licensee access to funds until conditions precedent satisfied.
- Funds forfeit to FCC upon FCC notice and certification when milestone is missed.
- FCC option to waive or extend milestone.
- These factors should maximize the chances that the debtor would be found not to have an enjoinable interest in the escrowed funds under the automatic stay.
- Note however, that under §108 of the Bankruptcy Code, the deadline for a debtor to complete a milestone may be extended if the bankruptcy is filed shortly before a milestone is to be completed.

Security Interest: The FCC also is interested in minimizing the risk that any escrowed funds might be recovered by the licensee or its financial backers notwithstanding forfeitures for missed milestones.

- To the extent that a Court were to find escrowed funds to be property of the estate, if the FCC has perfected a security interest in those funds, it would be a secured creditor in the bankruptcy case and, generally, entitled to full payment to the extent of the value of the collateral.

- Once a licensee transfers funds to the escrow account, it no longer "owns" those funds and thus cannot grant the FCC a security interest in the funds themselves (unless/until the funds are returned to the licensee).
- A licensee does receive certain contractual rights under the escrow agreement after transferring funds to the escrow account (for example, it has the contractual right to have the funds returned to it if the milestones are met). A licensee can grant the FCC a security interest in its contractual rights under the escrow agreement.
- The FCC should seek a perfected security interest in the licensee's contractual rights under the escrow agreement and in any funds that are returned to the licensee for a reason other than the achievement of a milestone. This would give the FCC added protection in the event any escrowed funds are improperly released, such as in connection with a determination by a bankruptcy court that such funds are property of the estate.
- A creditor perfects a security interest in a general intangible (i.e. licensee's contractual rights under the escrow agreement) by filing a financing statement.
- A creditor perfects a security interest in money (i.e. the funds in the escrow account) by possession.
- Under D.C. law, a creditor may take possession (for purposes of perfection of a security interest) of money held by a third party for its benefit where the person actually in possession (the escrow agent) authenticates a record (signs a letter) acknowledging that it holds possession of the money for the secured party's (FCC's) benefit. D.C. Code § 28:9-313.
- To the extent the escrow would be held or governed by laws other than those in the District of Columbia, review of the specific state's law, particularly whether the jurisdiction in question has adopted the revisions to Article 9 of the U.C.C., would be required to ensure that the FCC's interest is properly perfected.

FORM OF
SECURITY AGREEMENT

THIS SECURITY AGREEMENT (this "Agreement") is made as of this ___ day of _____, 200__ by _____, a _____ [corporation] ("Licensee") for the benefit of the Federal Communications Commission ("Secured Party").

Recital

WHEREAS, Licensee has been granted the right to construct, launch and operate a spacecraft at a specified location to provide certain satellite communications services, as further set forth on Exhibit A attached hereto (hereinafter "License"). Pursuant to the License, the Licensee must comply with a set of construction Milestones over a ___ year period.

WHEREAS Licensee is required to enter into an Escrow Agreement ("Escrow Agreement") and pay a deposit into an Escrow Account (the "Escrow Account") to be held in trust as surety for its performance in accordance with the terms and conditions of its License, including without limitation that Licensee will timely meet said Milestones (as defined in the License).

Agreement

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, Licensee hereby agrees as follows:

1. Security Interest. To secure the prompt and complete payment and performance in full when due of all liabilities and obligations of Licensee under the License (including timely achievement of the Milestones) and the Escrow Agreement (collectively, the "Secured Obligations"), Licensee hereby assigns and pledges to Secured Party as security and grants to Secured Party a valid and continuing first priority perfected security interest in the Collateral (as hereinafter defined). "Collateral" as used herein shall mean all of Licensee's right, title and interest in and to the Escrow Agreement, the Escrow Account, and all proceeds thereof, in each case whether now or hereafter existing or in which Licensee now has or hereafter acquires such right, title or interest. Without limiting any right of the Escrow Agent (as defined in the Escrow Agreement) or the Secured Party (as the "FCC" in the Escrow Agreement) under the Escrow Agreement, the Collateral shall also include all of Licensee's right, title and interest in and to all cash held in the Escrow Account (to the extent Licensee has any such interest) and all proceeds thereof.

2. Representations and Warranties. Licensee hereby represents and warrants to Secured Party that Licensee: (i) has the power and authority to enter into this Agreement; (ii) is in good standing in the jurisdiction of its organization and is qualified to do business in all jurisdictions where the nature of its business requires such qualification; (iii) has duly authorized this Agreement, this Agreement is binding upon it, and the execution, delivery, and performance

by it of this Agreement does not conflict with, result in a breach of, or constitute a default or ground for termination under any agreement to which it is a party or by which it is bound; and (vi) owns the Collateral free and clear of liens, claims and encumbrances.

3. Covenants. Licensee hereby covenants and agrees that it shall: (i) not sell, assign, transfer, convey or otherwise dispose of any of the Collateral, nor create, incur or permit to exist any pledge, mortgage, lien, charge, encumbrance or any other security interest in or upon any of the Collateral; (ii) at its cost and expense, defend against all actions, claims and demands affecting the Collateral, the security interest granted hereby, or Licensee's or Secured Party's right, title, interest or benefit in or to the Collateral and give Secured Party notice of any such action, claim or demand promptly, but in any event within five (5) days of becoming aware thereof; (iii) maintain its company existence and good standing and qualification in all jurisdictions in which the nature of its business requires such qualification; (iv) furnish Secured Party not less than thirty (30) days prior written notice of any change in the location of Licensee's business or operations; (v) not reorganize, merge, consolidate, liquidate or dissolve, nor change its name or conduct business under any name other than as set forth herein; and (vi) pay over to Secured Party or place in a separate account controlled by an independent third party any portion of the Collateral that is returned to it or possessed by it for any reason other than the completion of a Milestone, and, if the Collateral is delivered to a third party, require such third party to deliver to Secured Party an acknowledgement which states that the third party is taking possession of the Collateral for the sole benefit of the Secured Party.

4. Further Assurances. Licensee shall, at its cost and expense, execute and deliver to Secured Party such other and further documents, instruments and agreements as are reasonably requested by Secured Party to create, maintain, perfect, or assure the priority of, the security interest granted hereby, and shall take all further action reasonably requested by the Secured Party to enable the Secured Party to obtain the full rights and benefits of this Agreement. Without limiting the foregoing, Licensee shall, at its cost and expense, execute and deliver to the Secured Party, from time to time, such financing and continuation statements and amendments thereto as Secured Party may request, in a form satisfactory to Secured Party, for filing in such jurisdictions as Secured Party may determine. Secured Party is hereby authorized and appointed as agent and attorney-in-fact of Licensee, which appointment is coupled with an interest and shall be irrevocable so long as any of the Secured Obligations remain outstanding or in effect, to execute and deliver such documents, endorsements and instruments, and to take all such other actions (to the maximum extent permitted by law) in the name and on behalf of Licensee as Secured Party may deem necessary or advisable to create, maintain, perfect, assure the priority of, or foreclose, its security interest in and lien on the Collateral.

5. Events of Default. Licensee shall be in default under this Agreement upon the occurrence of any one or more of the following events (each an "Event of Default"): (i) any failure to timely achieve any Milestone; (ii) any failure to observe or perform any covenant or agreement of Licensee set forth in this Agreement or in the Escrow Agreement; (iii) any representation or warranty of Licensee is or becomes untrue at any time; (iv) any portion of the Collateral is returned to or possessed by Licensee for any reason other than the completion of the Milestone to which such portion of the Collateral relates; (v) the Secured Party at any time does not have a first priority perfected lien in the Collateral; or (vi) Licensee becomes subject, either

voluntarily or involuntarily, to a bankruptcy, reorganization, insolvency, dissolution or liquidation proceeding under federal or state law or makes an assignment for the benefit of creditors or becomes insolvent or unable to pay its debts when due, or a trustee, receiver, liquidator or other custodian for Licensee or all or any part of the Collateral is appointed or sought or all or any part of the Collateral is attached, levied upon or otherwise seized by legal process.

6. Rights and Remedies of Secured Party. Upon the occurrence of an Event of Default: (i) the Secured Party shall have the all rights and remedies provided by law, including, without limitation, those provided by the Uniform Commercial Code and all rights and remedies provided in this Agreement; (ii) subject to the provisions of the Uniform Commercial Code or other applicable law, Secured Party may cause all or any part of the Collateral to be transferred into its own name or the name of its nominees and may apply the Collateral to any amounts owed to the Secured Party, including amounts that are contingent, unliquidated or disputed; or (iii) the Secured Party shall have the right, at any time or times thereafter, to sell, resell, assign and deliver all or any of the Collateral at any public or private sale.

7. Termination. This Agreement and the security interest in the Collateral created hereby shall terminate when the Secured Party confirms in writing that the final Milestone has been timely achieved and all amounts due or owing by Licensee to Secured Party have been paid in full.

8. Notices. Any notice or other communication required or permitted hereunder shall be deemed to have been sufficiently given when delivered personally, by facsimile or by recognized overnight courier, or by registered or certified mail, return receipt requested, addressed as set forth on Exhibit A hereto, or to such other address as may be specified by any party in a written notice to the other parties.

9. Waivers, etc. Licensee hereby waives presentment, demand, notice, protest and, except as is otherwise provided herein, all other demands and notices in connection with this Agreement or the enforcement of Secured Party's rights hereunder or in connection with any Secured Obligations or any Collateral, and hereby consents to and waives notice of the granting of renewals, extensions of time for payment or other indulgences to Licensee or to any third party, or substitution, release or surrender of any collateral security for any Secured Obligation, the addition or release of persons primarily or secondarily liable on any Secured Obligation or on any collateral security for any Secured Obligation and/or the settlement or compromise thereof. No delay or omission on the part of Secured Party in exercising any right or remedy hereunder shall operate as a waiver of such right or remedy or of any other right or remedy hereunder. Any waiver of any such right or remedy on any one occasion shall not be construed as a bar to or waiver of any such right or remedy on any future occasion. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING OR LIMITING IN ANY WAY THE RIGHTS OF SECURED PARTY UNDER THE ESCROW AGREEMENT OR OTHERWISE UNDER APPLICABLE LAW, AFTER THE OCCURRENCE OF AN EVENT OF DEFAULT, LICENSEE FURTHER WAIVES ANY RIGHT IT MAY HAVE UNDER APPLICABLE LAW TO NOTICE (OTHER THAN ANY REQUIREMENT OF NOTICE PROVIDED HEREIN) OR TO A JUDICIAL HEARING PRIOR TO THE EXERCISE OF ANY RIGHT OR REMEDY

PROVIDED BY THIS AGREEMENT TO THE SECURED PARTY.

10. Miscellaneous. Licensee may not assign or delegate this Agreement or its obligations hereunder. This Agreement shall binding upon Licensee and its successors. Licensee shall pay on demand all of Secured Party's expenses (including, without limitation, costs and expenses of litigation and reasonable attorneys' fees) in enforcing its rights and remedies under this Agreement. In case any provision in this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. This Agreement may be amended or modified only by a writing signed by Licensee and Secured Party. The failure of Secured Party to insist upon strict performance of any of the terms, conditions, agreements, or covenants in this Agreement in any one or more instances shall not be deemed to be a waiver by Secured Party of its rights to enforce thereafter any of such terms, conditions, agreements, or covenants. Any waiver by Secured Party of any of the terms, conditions, agreements, or covenants in this Agreement must be in writing signed by Secured Party. This Agreement shall be construed in accordance with and governed by the laws of the District of Columbia, without regard to conflicts of law rules. In the event of any disagreement between the terms hereof and the terms of the Escrow Agreement, the terms of the Escrow Agreement shall control.

[SIGNATURE PAGE FOLLOWS]

12177622

SIGNATURE PAGE TO SECURITY AGREEMENT

IN WITNESS WHEREOF, Licensee has caused this Agreement to be executed by its duly authorized officer as of the day and year first above written.

LICENSEE:

By: _____

Name:

Title:

EXHIBIT A

Notice Addresses

If to the Secured Party:

To: _____

Fax: _____
Attn: _____

Copy: *

Fax: _____
Attn: _____

If to Licensee:

To: _____

Fax: _____
Attn: _____

Copy: *

Fax: _____
Attn: _____

* Copies shall not constitute notice.

FORM OF
ESCROW AGREEMENT

THIS ESCROW AGREEMENT (the "Agreement") is made as of this ___ day of _____, 200__ by and among the Federal Communications Commission (the "FCC"), _____, a _____ [corporation] (the "Licensee"), and _____, a national banking association (the "Escrow Agent").

Recital

WHEREAS, Licensee has been granted the right to construct, launch and operate a spacecraft at a specified location to provide certain satellite communications services, as further set forth on Exhibit A attached hereto (hereinafter "License"). Pursuant to the License, the Licensee must comply with a set of construction milestones over a ___ year period.

WHEREAS, Licensee is required to pay the Deposit Amount set forth on Exhibit A to the Escrow Agent to be held in trust as surety for its performance in accordance with the terms and conditions of its bid, including without limitation that Licensee will timely meet said milestones.

Agreement

NOW, THEREFORE, in consideration of grant of the License and the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the FCC, Licensee and Escrow Agent hereby agree as follows:

1. Escrow Account and Deposit. The Escrow Agent has established an account (the "Escrow Account") into which Licensee has paid, transferred and assigned all right, title and interest in and to the Deposit Amount (such deposit, as increased or decreased based upon investment results and disbursements, is referred to herein as the "Deposit"). The Escrow Agent shall hold the Deposit in trust and make disbursements therefrom as set forth in this Agreement. The Deposit shall be invested in a money market fund that can be liquidated on no more than **[30 days]** notice that invests in United States treasuries. Licensee shall have no interest in, and no right to exercise dominion or control over, the Deposit, other than the contingent right to receive all or a portion thereof on the specific circumstances set forth in Section 2 hereof and otherwise herein.

2. Release of Deposit by Escrow Agent. The Escrow Agent shall promptly release from the Deposit each Milestone Amount set forth on Exhibit A to Licensee or the FCC, as the case may be, upon the following circumstances:

(a) the Escrow Agent receives a written notice from the FCC (a "Milestone Completion Notice"): (i) that a Milestone set forth on Exhibit A has been achieved to the satisfaction of the FCC (in its sole discretion) by the applicable Milestone Deadline, and (ii)

directing the Escrow Agent to disburse to Licensee the Milestone Amount applicable to such Milestone;

(b) the Escrow Agent receives a written notice from the FCC (a “Milestone Failure Notice”): (i) that a Milestone set forth on Exhibit A has not been achieved to the satisfaction of the FCC (in its sole discretion) by the applicable Milestone Deadline, and (ii) directing the Escrow Agent to disburse to the FCC the Milestone Amount applicable to such Milestone; or

(c) the Escrow Agent receives a final order of a court of competent jurisdiction directing the Escrow Agent to make such release.

3. Other Deposit Release Provisions. The FCC may, in its sole discretion, from time-to-time extend or waive any Milestone Deadline set forth on Exhibit A by providing Escrow Agent and Licensee with notice thereof identifying the affected Milestone deadline and specifying the new deadline for such Milestone. Notwithstanding anything to the contrary set forth herein, Licensee shall have no right to receive any Milestone Amount or any other portion of the Deposit unless and until the FCC has given a Milestone Completion Notice directing that the applicable Milestone Amount is to be disbursed to Licensee.

4. Reliance by Escrow Agent. The Escrow Agent shall be entitled to rely upon and act in accordance with any of: (a) any Milestone Completion Notice or Milestone Failure Notice, and (b) a final order of a court of competent jurisdiction authorizing the Escrow Agent to release the Deposit, or any portion thereof, to Licensee or the FCC. All disbursements shall be made in accordance with written wire transfer instructions provided by the recipient of such disbursement.

5. Indemnification; Fees of Escrow Agent. Licensee and the FCC shall jointly and severally pay, and hold the Escrow Agent harmless against, all costs, charges, damages and attorneys’ fees which the Escrow Agent in good faith may incur or suffer in connection with or arising out of this Agreement. Licensee shall pay all fees of the Escrow Agent.

6. Rights and Duties of Escrow Agent.

(a) No assignment of the interest of any of the parties hereto shall be binding upon the Escrow Agent unless and until written evidence of such assignment in a form satisfactory to the Escrow Agent shall be filed with and accepted by the Escrow Agent.

(b) The Escrow Agent may rely or act upon orders or directions signed by the proper parties, or bearing a signature or signatures reasonably believed by the Escrow Agent to be genuine.

(c) The Escrow Agent shall have no duties other than those expressly imposed on it herein and shall not be liable for any act or omission except for its own gross negligence or willful misconduct.

(d) In the event that the Deposit or any proceeds thereof shall be attached, garnished, or levied upon by an order of any court, or the delivery thereof shall be stayed or enjoined by an order of court, or any order, judgment or decree shall be made or entered by any court affecting the property deposited under this Agreement, or any part thereof, the Escrow Agent is hereby expressly authorized in its sole discretion to obey and comply with all writs, orders or decrees so entered or issued, which it is advised by legal counsel of its own choosing is binding upon it, whether with or without jurisdiction, and in case the Escrow Agent obeys or complies with any such writ, order or decree it shall not be liable to any of the parties hereto or to any other person, firm or corporation, by reason of such compliance notwithstanding that such writ, order or decree be subsequently reversed, modified, annulled, set aside or vacated.

(e) The Escrow Agent may resign by giving sixty (60) days written notice of resignation, specifying the effective date thereof. Within thirty (30) days after receiving the aforesaid notice, the FCC and Licensee agree to appoint a successor escrow agent to which the Escrow Agent shall transfer the Deposit or any proceeds thereof then held in escrow under this Agreement. If a successor escrow agent has not been appointed and/or has not accepted such appointment by the end of the 30-day period, the Escrow Agent may at its sole option: (i) apply to a court of competent jurisdiction for the appointment of a successor escrow agent, and the costs, expenses and reasonable attorneys' fees which are incurred in connection with such a proceeding shall be paid one-half by the FCC and one-half by Licensee, or (ii) continue to hold the Deposit until it receives an order from a court of competent jurisdiction or joint written instructions of the FCC and Licensee directing the Escrow Agent to release the Deposit.

7. Disputes. In the event of any disagreement between any of the parties resulting in conflicting or adverse claims or demands being made to the Deposit, the Escrow Agent shall be entitled, at its sole option, to refuse to comply with or recognize any such claims or demands as long as the disagreement shall continue, and in doing so, Escrow Agent shall not become liable in any way to any person for failure or refusal to comply with such conflicting or adverse claims or demands, and its duties hereunder with regard to such disputed Deposit shall be suspended until the rights of the claimants have been fully adjudicated or the differences adjusted between the parties and the Escrow Agent shall have been notified thereof in writing signed by all parties interested. In the event the differences between the parties with regard to the disputed Deposit have not been adjusted, and the Escrow Agent has been so notified, within ten (10) days following receipt of notice by Escrow Agent of conflicting or adverse claims or demands, Escrow Agent may, but shall not be obligated to, interplead the disputed Deposit in court, and thereupon Escrow Agent shall be fully and completely discharged of its duties as Escrow Agent with regard to the Deposit. The parties shall be jointly and severally liable to Escrow Agent for all fees and expenses, including legal fees, incurred by Escrow Agent in exercising its rights.

8. Notices. Any notice or other communication required or permitted hereunder shall be deemed to have been sufficiently given when delivered personally, by facsimile or by recognized overnight courier or registered or certified mail, return receipt requested, addressed as set forth on Exhibit B hereto, or to such other address as may be specified by any party in a written notice to the other parties.

9. Miscellaneous. This Agreement shall be construed under the laws of the District of Columbia, without regard to principles of conflicts of laws. Other than extension or waiver of a Milestone Deadline pursuant to Section 3 hereof upon notice given by the FCC, this Agreement may be amended or modified, and any term may be waived, only if such amendment, modification or waiver is in writing and signed by all parties. This Agreement is a personal one, the duty of the Escrow Agent being only to the parties hereto, their successors or assigns, and to no other person whatsoever. Without limiting any provision of this Agreement, simultaneously with the execution of this Agreement, the Escrow Agent shall execute and deliver to the FCC an acknowledgement, in substantially the form of Exhibit C hereto, which states that the Escrow Agent is taking possession of the Deposit for the sole benefit of the FCC in accordance with Section 9-313 of the Uniform Commercial Code as adopted in the District of Columbia. This Agreement may be executed in counterparts.

[SIGNATURE PAGE FOLLOWS]

12177686

SIGNATURE PAGE TO ESCROW AGREEMENT

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed by their respective duly authorized officers as of the day and year first above written.

FCC:

FEDERAL COMMUNICATIONS COMMISSION

By: _____
Name:
Title:

LICENSEE:

By: _____
Name:
Title:

ESCROW AGENT:

By: _____
Name:
Title:

EXHIBIT A

License Deposit and Milestones

Satellite License: _____

Deposit Amount: \$ _____

Milestones:

A: Milestone Deadline: _____
Milestone Amount: _____

B: Milestone Deadline: _____
Milestone Amount: _____

EXHIBIT B

Notice Addresses

If to the FCC:

To: _____

Fax: _____
Attn: _____

Copy:* _____

Fax: _____
Attn: _____

If to Licensee:

To: _____

Fax: _____
Attn: _____

Copy:* _____

Fax: _____
Attn: _____

If to the Escrow Agent:

To: _____

Fax: _____
Attn: _____

Copy:* _____

Fax: _____
Attn: _____

* Copies shall not constitute notice.

EXHIBIT C

Acknowledgement