

Hearing Date and Time: June 21, 2012 at 2:00 p.m. (prevailing Eastern Time)
Response Deadline: June 14, 2012 at 5:00 p.m. (prevailing Eastern Time)

SULLIVAN & WORCESTER LLP

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Counsel to Elektrobot Inc.

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

In re:

TERRESTAR CORPORATION, *et al.*,

Debtors.

Chapter 11

Case No. 11-10612 (SHL)

(Jointly Administered)

**NOTICE OF FILING OF MOTION OF ELEKTROBIT INC. PURSUANT TO
11 U.S.C. § 105(d) FOR STATUS CONFERENCE AND RELATED RELIEF**

PLEASE TAKE NOTICE that on June 7, 2012, Elektrobot Inc. (“Elektrobot”), by and through its undersigned counsel, filed the *Motion of Elektrobot Inc. Pursuant to 11 U.S.C. § 105(d) for Status Conference and Related Relief* (the “Motion for Status Conference”).

PLEASE TAKE FURTHER NOTICE that a hearing (the “Hearing”) on the Motion for Status Conference will be held before the Honorable Sean H. Lane, United States Bankruptcy Judge, at the United States Bankruptcy Court, Alexander Hamilton Customs House, Courtroom 701, New York, New York 10004 on **June 21, 2012 at 2:00 p.m. (prevailing Eastern Time)**.

PLEASE TAKE FURTHER NOTICE that any objections or responses to the Motion for Status Conference must be in writing, shall conform to the Federal Rules of Bankruptcy Procedure and the Local Rules of the Bankruptcy Court, and the Bankruptcy Court's *Order Pursuant to Sections 105(a) and (d) of the Bankruptcy Code and Bankruptcy Rules 1015(c), 2002(m) and 9007 Implementing Certain Notice and Case Management Procedures*, dated February 23, 2011 (Doc. No. 12), shall be filed with the Bankruptcy Court either (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) 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 shall be served in accordance with General Order M-399 on: (i) the chambers of the Honorable Sean M. Lane; (ii) TerreStar Corporation, 12010 Sunset Hills Road, 6th Floor, Reston, Virginia 20190, Attn: Doug Brandon, Esq.; (iii) Akin Gump Strauss Hauer & Feld LLP as counsel to the TSC Debtors, One Bryant Park, New York, New York 10036, Attn: Ira S. Dizengoff, Esq. and Arik Preis, Esq., and 1700 Pacific Avenue, Suite 4100, Dallas, Texas 75201, Attn: Sarah Link Schultz, Esq.; (iv) the Office of the United States Trustee for the Southern District of New York, 33 Whitehall Street, 21st Floor, New York, New York 10004; (v) NexBank, SSB as agent for the lenders under the Bridge Loan Agreement; (vi) NexBank, SSB as agent for the TSC Debtors' debtor-in-possession financing; (vii) the Internal Revenue Service; (viii) the Federal Communications Commission; (ix) the Securities and Exchange Commission; (x) the United States Attorney for the Southern District of New York; (xi) all parties who have requested notice pursuant to Bankruptcy Rule 2002; (xii) Weil, Gotshal & Manges LLP as

counsel to Harbinger, 767 Fifth Avenue, New York, New York 10153, Attn: Debra A. Dandeneau, Esq.; (xiii) Wachtell, Lipton, Rosen & Katz as counsel to Highland, 51 West 52nd Street, New York, New York 10019, Attn: Scott K. Charles, Esq. and Alexander B. Lees, Esq.; (xiv) Quinn Emanuel Urquhart & Sullivan, LLP as counsel to Solus, 51 Madison Avenue, 22nd Floor, New York, New York 10010, Attn: Scott C. Shelley, Esq. and Daniel S. Holzman, Esq.; (xv) Otterbourg, Steindler, Houston & Rosen, 230 Park Avenue, New York, New York 10169, Attn: David M. Posner, Esq. and Scott L. Hazan, Esq.; (xvi) Richards Kibbe & Orbe LLP, as counsel to West Face, One World Financial Center, New York, NY 10281, Attn: Michael Friedman, Esq. and Keith N. Sambur, Esq.; and (xvii) Sullivan & Worcester LLP as counsel to Elektrobit Inc., One Post Office Square, Boston, Massachusetts, 02109, Attn: Pamela Smith Holleman, Esq. and Patrick P. Dinardo, Esq., and 1290 Avenue of the Americas, New York, New York 10104, Attn: Michael J. Student, Esq., so as to be received by no later than **June 14, 2012 at 5:00 p.m. (prevailing Eastern Time)** (the "Response Deadline").

PLEASE TAKE FURTHER NOTICE that if an objection or response to the Motion for Status Conference is not received by the Response Deadline, the relief requested shall be deemed unopposed, and the Bankruptcy Court may enter an order granting the relief sought without a hearing.

PLEASE TAKE FURTHER NOTICE that the responding parties are required to attend the Hearing, and failure to appear may result in relief being granted or denied upon default.

Dated: June 7, 2012

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**UNITED STATES BANKRUPTCY COURT
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In re:

TERRESTAR CORPORATION, *et al.*,

Debtors.

Chapter 11

Case No. 11-10612 (SHL)

(Jointly Administered)

**MOTION OF ELEKTROBIT INC. PURSUANT TO 11 U.S.C. § 105(d)
FOR STATUS CONFERENCE AND RELATED RELIEF**

Elektrobit Inc. ("Elektrobit"), by and through its undersigned counsel, hereby moves, pursuant to 11 U.S.C. 105(d), that the Court schedule a status conference in these cases¹ and thereafter enter an order establishing a reasonable time schedule for consideration of any proposed plan. In support hereof, Elektrobit states as follows:

INTRODUCTION

1. Elektrobit has no clear view of the progress of these cases going forward and is concerned that, after months of delay, other parties in interest may now press for an accelerated

¹ The debtors in these cases (the "TSC Debtors") include TerreStar Corporation ("TSC"), Motient Communications Inc., Motient Holdings Inc., Motient License Inc., Motient Services Inc., Motient Ventures Holding Inc., MVH Holdings Inc., TerreStar Holdings Inc. ("TS Holdings") and TerreStar New York Inc.

REDACTED

timeline. This is so notwithstanding the Court's instructions to debtors' counsel to keep Elektrobit informed and repeated assurances from counsel that they will work with Elektrobit to ensure that it has adequate time to prepare and present a comprehensive opposition to the pending plan. As TSC's largest unsecured creditor, in the absence of an official committee, Elektrobit has assumed responsibility for advocating for a plan that will treat TSC's unsecured creditors fairly and equitably. Its efforts to develop a record in these contested matters have been met at every turn with delay and obstructionist tactics by certain preferred shareholders and (more surprisingly) by the debtors themselves. Given these obstacles, and recent developments in these cases (necessarily set forth in some detail below), Elektrobit thinks it essential that the Court conduct a status conference and thereafter enter an order establishing a schedule that will allow Elektrobit to properly prepare for what it expects will be a contested confirmation hearing.

JURISDICTION AND VENUE

2. The Court has jurisdiction over the subject matter and the parties pursuant to 28 U.S.C. §§ 157 and 1334 and Standing Order M-431 of the United States District Court for the Southern District of New York, dated January 31, 2012 (Preska, C.J.). This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

BACKGROUND

Relevant Procedural History

3. As the Court is aware, Elektrobit is the TSC Debtors' largest unsecured trade creditor, having asserted a general unsecured claim against TSC's estate in the amount of \$27,869,769.82 (at least). For voting purposes, Elektrobit holds a Class 4a general unsecured

claim against TSC in the amount of \$27,869,769.82.²

4. Eleven months ago, on July 22, 2011, the TSC Debtors filed a plan of reorganization (as thereafter amended, the “Plan”),³ and on August 6, 2011, a disclosure statement for the Plan (as thereafter amended, the “Disclosure Statement”).⁴ Though the basis for the Plan as stated in the Disclosure Statement has fallen through, as more fully set forth below, the Plan is still presently pending before the Court.

5. On September 30, 2011, Elektrobit filed a preliminary objection to confirmation of the Plan (the “Preliminary Objection”),⁵ stating that the Plan may not satisfy the “best interest of creditors” test embodied in Section 1129(a)(7),⁶ may not be feasible, contrary to Code Section 1129(a)(11), may discriminate unfairly, may not be fair and equitable, and may not satisfy the absolute priority rule, contrary to Code Section 1129(b). Elektrobit also stated its intention to supplement the Preliminary Objection and reserved the right to timely raise any issues or objections to confirmation of the Plan based upon Code Section 1129 and other statutory provisions applicable to confirmation, whether or not stated in the Preliminary Objection. *Id.* at

¶¶ 4, 7.

² Elektrobit’s claim has been placed in Class 4a of the Plan for voting purposes only. *Stipulation and Agreed Order Temporarily Allowing and Valuing Elektrobit Inc.’s Claim No. 58 For Voting Purposes Only* (Docket No. 193).

³ Reference is made to the *Joint Chapter 11 Plan of TerreStar Corporation, Motient Communications Inc., Motient Holdings Inc., Motient License Inc., Motient Services Inc., Motient Ventures Holding Inc., MVH Holdings Inc., TerreStar Holdings Inc. and TerreStar New York Inc.* (Docket No. 141).

⁴ Reference is made to the *Disclosure Statement for the Joint Chapter 11 Plan of Terrestar Corporation, Motient Communications Inc., Motient Holdings Inc., Motient License Inc., Motient Services Inc., Motient Ventures Holding Inc., MVH Holdings Inc., Terrestar Holdings Inc. and Terrestar New York Inc.* (Docket No. 149).

⁵ Reference is made to the *Preliminary Objection of Elektrobit Inc. to Confirmation of the Joint Chapter 11 Plan of Terrestar Corporation, Motient Communications Inc., Motient Holdings Inc., Motient License Inc., Motient Services Inc., Motient Ventures Holding Inc., MVH Holdings Inc. Terrestar Holdings Inc. and Terrestar New York Inc.* (Docket No. 222).

⁶ 11 U.S.C. § 101 *et seq.* are herein referred as the “Code.” Unless a contrary designation is indicated, the term “Section” when used herein shall be a reference to a section or subsection of the Code.

6. On January 17, 2012, the Court entered an order (the “Disclosure Statement Order”)⁷ approving a revised version of the Disclosure Statement, establishing solicitation and voting procedures with respect to the Plan (“Voting Procedures”), and scheduling a March 7, 2012 hearing on confirmation of the proposed Plan (the “Confirmation Hearing”).

7. The Voting Procedures set February 24, 2012 as the deadline for submitting ballots and objections to confirmation (the “Voting Deadline”). Upon information and belief, the only classes of claims at TSC that may be eligible to vote to accept or reject the Plan pursuant to the Disclosure Statement are Class 3a, the Bridge Loan Lenders (as hereinafter defined) and Class 4a, general unsecured creditors of TSC.⁸

8. Following entry of the Disclosure Statement Order, the TSC Debtors solicited acceptances of the Plan. Elektrobit timely cast its ballot prior to the Voting Deadline, voting to reject the Plan.⁹ Upon information and belief, Elektrobit’s claim comprises more than 85% of the total dollar amount of claims in Class 4a. Thus, given Elektrobit’s rejection, Class 4a has rejected the Plan.¹⁰

9. Meanwhile, on February 22, 2012, Elektrobit filed its Motion Pursuant to Section 1126(e) of the Bankruptcy Code for an Order Designating the Votes of NexBank, SSB, as

⁷ Reference is made to the *Order (A) Approving the Disclosure Statement for the Joint Chapter 11 Plan of the TSC Debtors and (B) Establishing Solicitation and Voting Procedures with Respect to the Joint Chapter 11 Plan of the TSC Debtors* (Docket No. 343).

⁸ As discussed below, Elektrobit has filed a motion to designate the votes of the Bridge Loan Lenders pursuant to Code Section 1126(e). Moreover, and in the alternative, based upon facts elicited by Elektrobit in discovery to date, Elektrobit anticipates that the Court may find that the Bridge Loan Lenders are statutory and/or nonstatutory insiders of the TSC Debtors and, therefore, that the vote of the Bridge Loan Lender class must be disregarded for purposes of satisfying the requirements of Code Section 1129(a)(10). In filing the within Motion, Elektrobit reserves all rights with respect to the Motion to Designate (as hereinafter defined) and, more generally, the voting or non-voting status of the Bridge Loan Lender class.

⁹ By agreement, the deadline for Elektrobit to file a comprehensive objection to confirmation has been extended to a date that is one week prior to the confirmation hearing (the date of which has yet to be determined).

¹⁰ See *Section 1126(c)* (acceptance by a class of claims requires acceptance by creditors holding “at least two thirds in amount and more than one-half in number of the allowed claims of such class”).

Administrative Agent, and/or Harbinger Capital Partners Master Fund I, Ltd., Harbinger Capital Partners Special Situations Fund, L.P., Highland Crusaders Holding Corporation and Sola Ltd. to Accept the Plan (the “Motion to Designate”) (Docket No. 394). In that motion, Elektrobit asked the Court to find that any and all votes by Nexbank, SSB, as Administrative Agent (the “Agent”), Harbinger Capital Partners Master Fund I, Ltd. (“Harbinger Master Fund”), Harbinger Capital Partners Special Situations Fund, L.P. (“Harbinger Special Situations Fund”, and together with Harbinger Master Fund, the “Harbinger Funds”), Highland Crusaders Holding Corporation (“Highland Crusaders”) and Sola Ltd. (“Sola”, and together with the Harbinger Funds and Highland Crusaders, the “Bridge Loan Lenders”) ¹¹ to accept the Plan will not have been made in good faith and should be designated pursuant to Code Section 1126(e). The Motion to Designate is presently pending before the Court. ¹²

10. The Confirmation Hearing has been adjourned three times. ¹³ On April 12, 2012, rather than further rescheduling the hearing, the Court instead held a status conference. At that conference, counsel informed the Court that the TSC Debtors wished to reschedule the Confirmation Hearing to a date in late May. To date, however, the Confirmation Hearing has not been further rescheduled.

¹¹ The Harbinger Funds are affiliated with Harbinger Capital Partners LLC (“Harbinger”). Highland Crusaders is affiliated with Highland Capital Management, L.P. (“Highland”). Sola is affiliated with Solus Alternative Asset Management LP (“Solus”, and together with Harbinger, Highland, and the Bridge Loan Lenders, the “Bridge Loan Lender Group” or the “Group”).

¹² By agreement, the deadline for the Bridge Loan Lenders to respond to the Motion to Designate has been extended coterminously with the deadline for Elektrobit’s filing of this Objection.

¹³ See Notices of Adjournment filed by the TSC Debtors on February 27, 2012 (adjournment of Confirmation Hearing to March 20, 2012) (Docket No. 399), March 7, 2012 (adjournment to April 11, 2012) (Docket No. 412) and March 30, 2012 (adjournment to a date to be determined by the Court) (Docket No. 447). By agreement, the Motion to Designate has been concurrently adjourned. See Notices of Adjournment filed by Elektrobit on March 5, 2012 (adjournment of hearing on Motion to Designate to March 20, 2012) (Docket No. 409), March 16, 2012 (adjournment to April 11, 2012) (Docket No. 426) and April 2, 2012 (adjournment to a date to be determined by the Court) (Docket No. 449)

Recent Events

A. Termination of the 1.4 Spectrum Lease

11. The pending Plan is predicated “exclusively” upon a continuing income stream derived from the TSC Debtors’ principal asset, an indirect interest in 1.4 GHz spectrum (the “1.4 Spectrum”) licensed to a non-debtor subsidiary, TerreStar 1.4 Holdings LLC (“1.4 Holdings”).¹⁴ Since 2009, the 1.4 Spectrum was leased (the “Spectrum Lease”) to One Dot Four Corp. (“ODF”), a subsidiary of LightSquared, Inc. (“LightSquared”) an affiliate of Harbinger, for \$2 million per month.

12. When deposed by Elektrobit, C.J. Brown, a managing director of Blackstone Advisory Partners, the TSC Debtors’ financial advisor, admitted that

See Deposition of C.J.

*Brown, dated 1/06/2012, at 206.*¹⁵

13. The TSC Debtors recently informed the Court that, on or about April 1, 2012, ODF defaulted on its payment obligations. On April 20, 2012, the Spectrum Lease was terminated by agreement.

14. On May 14, 2012, LightSquared and ODF filed Chapter 11 petitions with this Court (Case No. 12-12080 (Jointly Administered)). Their cases are presently pending before Judge Chapman.

15. Even though the 1.4 Spectrum is no longer encumbered by the recently-terminated Spectrum Lease, on June 4, 2012 an attorney for the TSC Debtors responded to an inquiry from Elektrobit’s counsel by stating that the TSC Debtors have no intention of marketing

¹⁴ See *Disclosure Statement* at 18 and *Exhibit E* (Financial Projections) at § D note 2 (“Reorganized TerreStar Corporation Projected Income Statement”).

¹⁵

the 1.4 Spectrum at this time, notwithstanding some evidence of interest in the marketplace¹⁶ and the continuing interest of TSC's preferred shareholders.

B. Actions by the Bridge Loan Lender Group

16. Upon information and belief, after entry of the Disclosure Statement Order, Highland sold, transferred and assigned some of its Series A preferred shares in TSC, and Harbinger sold, transferred and assigned some or all of Series B preferred shares to hedge fund West Face Long Term Opportunities Global Master L.P. ("West Face"). Elektrobit has no information regarding the agreements by which such interests were sold, transferred or assigned, or the effect (if any) of such agreements upon the status of the pending Plan.

17. In the past 8 ½ months, since filing of its Preliminary Objection, Elektrobit has made extensive efforts to obtain discovery with respect to the Plan and the Motion to Designate. Its efforts have been repeatedly thwarted by assertions by members of the Bridge Loan Lender Group of a so-called "joint-interest privilege" that they claim shields from discovery by TSC's creditors relevant communications that members of the Group have had between and among themselves, and with the TSC Debtors, about the course and conduct of these proceedings.

18. As a general matter, attempts to use privilege to shield manipulative conduct raise serious concerns in bankruptcy, a collective proceeding administered for the benefit of all parties in interest, including creditors. As one court observed:

[E]nforcement of [a joint defense agreement] designed to provide special protection *to insiders* who controlled a debtor prepetition, would be decidedly unfair in the context of bankruptcy. Enforcement of [such an agreement] – which was executed in anticipation of a possible bankruptcy filing – creates a situation that is *ripe for abuse*. The special protection provided by [such an agreement] invites collusion among the entities that allegedly controlled the Debtors and

¹⁶ Indeed, Elektrobit recently referred to TSC Debtors' counsel an inquiry received from counsel acting for an entity that expressed interest in a potential acquisition.

creates the potential for wrongdoing. Therefore, it is against public policy and unfair to the Debtors' estates and their creditors to handcuff the Trustee's pursuit of claims for the benefit of creditors by withholding documents that would [otherwise] be discoverable

In re Ginn-LA St. Lucie Ltd., 439 B.R. 801, 807-08 (Bankr. S.D. Fla. 2010) (Hyman, C.J.) (emphasis added). Compare, e.g., “*The Shadow Bankruptcy System*,” Jonathan C. Lipson, http://works.bepress.com/jonathan_lipson/2. In his article, Professor Lipson (Temple University-James E. Beasley School of Law) assesses the role of hedge funds and other unregulated, non-bank financial institutions in the context of the importance of transparency in the “fishbowl” of Chapter 11 cases.

19. Here, however, it is noteworthy that – as testified by Highland’s representative, Trey Parker – *See Deposition*
of Trey Parker, dated 2/1/2012, at 33-35.¹⁷ This does not necessarily equate to a legitimate common legal interest that warrants the protection of a privilege. *See In re Hardwood P-G, Inc.*, 403 B.R. 445, 459 (Bankr. W.D. Tex. 2009) (common interest doctrine is strictly limited to those communications made to further a joint effort with respect to a common legal interest); *In re Megan-Racine Assocs., Inc.*, 189 B.R. 562, 573 (Bankr. N.D.N.Y. 1995) (“[T]he joint-defense

¹⁷

privilege should be limited to those who share more than a common commercial interest, as that is not a discriminating factor in the bankruptcy context.”). Elektrobit generally reserves all rights as to any invocation of a “joint interest privilege” to shield communications relating to the TSC Debtors and their assets, and suggests that a resolution of this issue will be necessary before the Plan may be confirmed.

20. Moreover, upon information and belief counsel from Quinn Emanuel Urquhart & Sullivan, LLP (“QE”), which represents Solus and other parties in interest in these cases, pre-screened documents produced by Houlihan Lokey Howard & Zuckin, Inc. (“Houlihan Lokey”) and Millenium International Management, L.P. (“Millenium”) in response to Elektrobit’s subpoenas, and caused at least two documents to be withheld from Houlihan Lokey’s production, presumably with a view to protecting privileges asserted by the Group. QE may also have caused documents to be similarly withheld from Millenium’s production. In addition, QE served responses to discovery addressed to its clients NexBank Capital Management Group (“NexBank”) and Och-Ziff Capital Management Group LLC (“Och-Ziff”), and refused to produce any documents in response to Elektrobit’s requests.¹⁸

C. Motion to Extend Exclusivity

21. On May 10, 2012, at an informal discovery conference requested by Elektrobit, the TSC Debtors’ counsel stated that they had not decided whether, based upon recent events, they would withdraw the Plan or proceed to a Confirmation Hearing for this Plan, with some modifications. In response to the Court’s question regarding timing parameters, counsel to the TSC Debtors responded that they expected to reach a decision regarding the Plan some time

¹⁸ Houlihan Lokey has served as an advisor to certain preferred shareholders and other parties in interest in these cases and may have made presentations to a Special Committee of the TSC Board. NexBank is administrative agent for the Bridge Loan Lenders. Och-Ziff and Millenium hold Series B preferred shares in TSC.

during the week of May 21, 2012. The Court instructed counsel to inform all constituencies, including Elektrobit, regarding the progress of these cases.

22. From May 10, 2012 until June 4, 2012, Elektrobit received no further information from the TSC Debtors regarding the status of the pending Plan. However, on June 4, 2012, TSC Debtors' counsel contacted attorneys for Elektrobit, suggesting that the TSC Debtors intend to file a motion seeking a further extension of their exclusive periods to file and solicit acceptances of a plan (presently scheduled to expire on June 28, 2012 and August 27, 2012, respectively). Counsel further stated that the TSC Debtors continue to engage in confidential discussions with their preferred shareholders concerning the Plan and may or may not re-solicit the Plan, but offered no firm details of the discussions.

23. Elektrobit will review the expected motion to extend exclusivity and, upon review, consider whether to object to it.¹⁹ However, at present Elektrobit does not understand the purpose of such an extension. To its knowledge, there is no competing plan "in the wings". Moreover, Elektrobit is disturbed by the fact that months have passed with no apparent progress, and no effort has been made, and none is contemplated, to market the 1.4 Spectrum. Elektrobit is therefore concerned that an extension may serve to frustrate efforts to monetize the spectrum asset for the benefit of creditors.²⁰

24. More generally, Elektrobit is troubled by the fact that, even after the Court's comments at the informal discovery conference held on May 10, 2012, Elektrobit still does not

¹⁹ Elektrobit is also considering whether to file, in due course, a motion asking the Court to convert these cases to a Chapter 7 liquidation.

²⁰ Elektrobit further notes that it appears from time records filed with the Court that the debtors' professionals have engaged in ongoing discussions regarding an extension of the Voting Deadline for Solus (and perhaps others). Since Class 4a has rejected the Plan, the only class of claims at TSC that is likely to vote to accept the Plan is Class 3a. Since claims in Classes 3a and 4a are held by small groups of creditors (principally the Bridge Loan Lenders and Elektrobit) who have already taken positions on the Plan, it is not clear to Elektrobit what the purpose of such an extension may be.

understand and has not been made aware of the details of ongoing discussions between the TSC Debtors and the Bridge Loan Lender Group regarding the pending Plan.²¹

RELIEF REQUESTED AND BASIS THEREFOR

25. Elektrobit hereby requests, pursuant to Section 105(d), that the Court schedule a status conference at its earliest convenience and require the TSC Debtors to state their intentions plainly with respect to the pending Plan, and thereafter enter an order setting forth a reasonable time schedule for consideration of any proposed plan and afford Elektrobit sufficient time to prepare for a contested confirmation hearing no earlier than the middle of September.

26. Section 105(d) provides, in relevant part, that –

(d) The court, on its own motion or on the request of a party in interest

(1) shall hold such status conferences as are necessary to further the expeditious and economical resolution of the case; and

(2) unless inconsistent with another provision of this title or with applicable Federal Rules of Bankruptcy Procedure, issue an order at any such conference prescribing such limitations and conditions as the court deems appropriate to ensure that the case is handled expeditiously and economically, including an order that – ...

(B) in a case under chapter 11 of this title – ...

(ii) sets a date by which the debtor, or trustee if one has been appointed, shall solicit acceptances of a plan;

(iii) sets the date by which a party in interest other than a debtor may file a plan; ...

(iv) sets a date by which a proponent of a plan, other than the debtor, shall solicit acceptances of such plan ...

²¹ At the same time, the TSC Debtors have dragged their feet in response to Elektrobit's legitimate discovery requests. For example, TSC's counsel has reviewed some 50,000 pages of documents relating to the pending objections to Elektrobit's claim, but has produced only approximately 2100 pages to Elektrobit to date. In addition, despite promises of cooperation, the TSC Debtors have failed to cooperate in scheduling witnesses for deposition.

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27. As the Court is well aware, bankruptcy courts in this district regularly oversee their chapter 11 cases through periodic status conferences held pursuant to 11 U.S.C. § 105(d). *In re MMG LLC*, 256 B.R. 544, 553 (Bankr. S.D.N.Y. 2000); *see also In re Duratech Indus.*, 241 B.R. 291, 294 (Bankr. E.D.N.Y. 1999) (same, as to Eastern District bankruptcy courts).

28. Courts have used their authority under Section 105(d) for a variety of purposes where such uses were found to be consistent with the Code. *See In re Pacific Avenue, LLC*, 467 B.R. 868, 870 (Bankr. W.D.N.C. 2012) (order entered disbanding creditors' committee); *In re Fibermark, Inc.*, No. 04-10463, 2005 WL 1563440 at *2 (Bankr. D. Vt. June 29, 2005) (conference held to solicit information as to whether competing plans would be filed); *In re Texasoil Enters.*, No. 02-45470-DML-11, 2002 WL 34346817 (Bankr. N.D. Tex. Oct. 10, 2002) (conference held and order entered directing limitations and conditions on rights, powers and duties of debtor-in-possession).

29. Here, the need for a conference is clear and immediate. Recent events – including termination of the Spectrum Lease and ODF's bankruptcy filing – raise serious questions about the status of the Plan. However, nearly a month after the parties spoke with the Court on May 10, 2012, Elektrobit still does not know whether the Plan will be withdrawn or revised and resolicited. At the opposite extreme, the TSC Debtors may decide that any change in the Plan is sufficiently minor that the existing Disclosure Statement is adequate and seek to schedule a Confirmation Hearing to be held before August 16, 2012 – the statutory “hard stop” to any extension of the debtors' exclusive period for filing a plan.²² In the meantime, Elektrobit continues to lose time (and incur additional cost and fees by reason of the delay), as its efforts to

²² *See Section 1121(d)(2)(A)* (“The 120-day period specified in paragraph (1) [a debtor's exclusive period for filing a plan] may not be extended beyond a date that is 18 months after the date of the order for relief under this chapter.”). The order for relief in TSC's case entered on February 16, 2011, the date of the filing of its Chapter 11 petition.

move forward with fact discovery regarding the Plan, its Motion to Designate and the objections to its claim, are repeatedly frustrated.

30. For all these reasons, Elektrobit respectfully requests, pursuant to Section 105(d), that the Court schedule a status conference to be held on June 21, 2012 (or as soon thereafter as the parties may be heard) and ask the TSC Debtors to state their intentions plainly so that the Court and *all* parties in interest, including Elektrobit, have a clear view of the anticipated progress of these cases. The Court may thereafter have sufficient information to establish a schedule leading to a confirmation hearing. Elektrobit requests that such a schedule include (among other things) time to brief and argue the “joint interest privilege” and any other evidentiary issues, and to conduct discovery into recent developments in these cases, including the basis (if any) for the TSC Debtors’ decision to refrain from marketing the 1.4 Spectrum now that it is no longer encumbered by the Spectrum Lease.

CONCLUSION

WHEREFORE, Elektrobit respectfully requests that the Court grant the relief requested herein, and such other and further relief as is just and proper.

Dated: June 7, 2012

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Counsel to Elektrobit Inc.

CERTIFICATE OF SERVICE

The undersigned certifies that as of this date s/he caused a true and correct copy of the foregoing **Motion Of Elektrobit Inc. Pursuant to 11 U.S.C. § 105(d) for Status Conference and Related Relief** to be filed electronically via the ECF system and served, postage prepaid, by e-mail, first class mail, or overnight mail if so indicated, on all members of the attached Service List.

Dated: June 7, 2012

/s/ Pamela Smith Holleman
Pamela Smith Holleman

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