

ICO Global Communications (Holdings) LTD

Form 10-Q

May 11, 2009

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**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**

**Washington, D.C. 20549**

**FORM 10-Q**

(Mark One)

**QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**  
For the quarterly period ended March 31, 2009

Or

**TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**  
For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission File Number 001-33008

**ICO GLOBAL COMMUNICATIONS**  
**(HOLDINGS) LIMITED**

(Exact name of registrant as specified in its charter)

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**Delaware**  
(State or other jurisdiction of

**98-0221142**  
(IRS Employer Identification No.)

incorporation or organization)

**Plaza America Tower I, 11700 Plaza America Drive, Suite 1010, Reston, Virginia 20190**

(Address of principal executive offices including zip code)

**(703) 964-1400**

(Registrant's telephone number, including area code)

Indicate by check mark whether the registrant: (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No .

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes  No .

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer or a smaller reporting company. See the definitions of large accelerated filer, accelerated filer and smaller reporting company in Rule 12b-2 of the Exchange Act.

Large accelerated filer  Accelerated filer  Non-accelerated filer  Smaller reporting company   
(Do not check if a smaller reporting company)

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes  No .

As of May 1, 2009, the registrant had 154,407,549 shares of Class A common stock and 53,660,000 shares of Class B common stock outstanding.

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**ICO GLOBAL COMMUNICATIONS (HOLDINGS) LIMITED**

**FORM 10-Q**

**For the three months ended March 31, 2009**

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**Table of Contents****PART I FINANCIAL INFORMATION****Item 1. Financial Statements****ICO Global Communications (Holdings) Limited****(A Development Stage Enterprise)****Condensed Consolidated Balance Sheets****(In thousands, except share data, unaudited)**

	<b>March 31, 2009</b>	<b>December 31, 2008</b>
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$ 23,117	\$ 29,261
Investments available-for-sale securities	2,170	5,961
Investments trading securities	4,340	
Prepaid expenses and other current assets	2,859	8,890
<b>Total current assets</b>	<b>32,486</b>	<b>44,112</b>
Property in service-net of accumulated depreciation of \$1,055 and \$953, respectively	970	1,059
Satellite system under construction	548,236	544,514
Investments available-for-sale securities	25,382	29,214
Investments trading securities	27,923	34,210
Debt issuance costs-net of accumulated amortization of \$26,323 and \$24,225, respectively	3,235	5,333
Other assets	4,776	5,522
<b>Total</b>	<b>\$ 643,008</b>	<b>\$ 663,964</b>
<b>LIABILITIES AND STOCKHOLDERS DEFICIENCY IN ASSETS</b>		
Current liabilities:		
Accounts payable	\$ 2,786	\$ 556
Accrued satellite system construction payable	8,017	8,973
Accrued expenses	23,023	21,503
Deferred satellite performance incentives	1,396	1,680
Accrued interest	26,655	39,171
Working capital facility	43,722	43,722
Convertible debt net of discount of \$3,549 and \$5,824, respectively	732,727	700,488
Current portion of capital lease obligations	16,287	15,624
<b>Total current liabilities</b>	<b>854,613</b>	<b>831,717</b>
Capital lease obligations, less current portion	583	1,296
Income tax	10,883	11,058
Deferred satellite performance incentives	9,292	9,204
Other	3,200	3,200
<b>Total liabilities</b>	<b>878,571</b>	<b>856,475</b>
Commitments and contingencies (Note 8)		
Stockholders' deficiency in assets:		

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Preferred stock, \$.01 par value, 75,000,000 shares authorized, no shares issued or outstanding		
Class A common stock, \$.01 par value, 900,000,000 shares authorized, 212,505,449 and 212,005,449 shares issued, and 154,407,549 and 154,006,103 shares outstanding	2,125	2,120
Class B convertible common stock, \$.01 par value, 150,000,000 shares authorized, 84,663,382 shares issued and 53,660,000 shares outstanding	847	847
Additional paid-in capital	2,792,510	2,790,967
Treasury stock, 58,097,900 and 57,999,346 shares of Class A common stock and 31,003,382 shares of Class B convertible common stock	(877,616)	(877,545)
Accumulated other comprehensive income	8,285	6,695
Deficit accumulated during the development stage	(2,161,714)	(2,115,595)
Total stockholders' deficiency in assets	(235,563)	(192,511)
<b>Total</b>	<b>\$ 643,008</b>	<b>\$ 663,964</b>

The accompanying notes are an integral part of these condensed consolidated financial statements.

**Table of Contents****ICO Global Communications (Holdings) Limited****(A Development Stage Enterprise)****Condensed Consolidated Statements of Operations****(In thousands, except share and per share data, unaudited)**

	Three months ended March 31,		February 9, 2000 (inception) to March 31, 2009 (development stage period)
	2009	2008	
Operating expenses:			
General and administrative	\$ 17,014	\$ 17,287	\$ 691,044
Research and development	1,544	1,606	83,692
Contract settlements			(74,955)
Impairment of property under construction			1,438,304
Loss on disposal of assets			11,117
<b>Total operating expenses</b>	<b>18,558</b>	<b>18,893</b>	<b>2,149,202</b>
Operating loss	(18,558)	(18,893)	(2,149,202)
Interest income	421	1,793	138,145
Interest expense	(22,323)	(9,242)	(253,133)
Other expense	(5,369)	(3,843)	(4,081)
Loss before income taxes	(45,829)	(30,185)	(2,268,271)
Income tax benefit (expense)	(290)	(533)	116,289
Net loss before cumulative effect of change in accounting principle	(46,119)	(30,718)	(2,151,982)
Cumulative effect of change in accounting principle			(1,944)
Net loss	\$ (46,119)	\$ (30,718)	\$ (2,153,926)
Basic and diluted loss per share:			
Loss before cumulative effect of change in accounting principle	\$ (0.22)	\$ (0.15)	\$ (11.05)
Cumulative effect of change in accounting principle			(0.01)
Basic and diluted loss per share	\$ (0.22)	\$ (0.15)	\$ (11.06)
Weighted average shares outstanding used to compute basic and diluted loss per share	207,439,060	198,424,189	194,748,869

The accompanying notes are an integral part of these condensed consolidated financial statements.

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**ICO Global Communications (Holdings) Limited**

**(A Development Stage Enterprise)**

**Condensed Consolidated Statements of Comprehensive Loss**

**(In thousands, unaudited)**

	<b>Three months ended March 31,</b>		<b>February 9, 2000 (inception) to March 31, 2009 (development stage period)</b>
	<b>2009</b>	<b>2008</b>	
Net loss	\$ (46,119)	\$ (30,718)	\$ (2,153,926)
Other comprehensive loss:			
Cumulative translation adjustments	1,590	(1,117)	8,285
Comprehensive loss	\$ (44,529)	\$ (31,835)	\$ (2,145,641)

The accompanying notes are an integral part of these condensed consolidated financial statements.

**Table of Contents****ICO Global Communications (Holdings) Limited****(A Development Stage Enterprise)****Condensed Consolidated Statements of Cash Flows****(In thousands, unaudited)**

	<b>Three months ended March 31,</b>		<b>February 9, 2000 (inception) to March 31, 2009 (development stage period)</b>
	<b>2009</b>	<b>2008</b>	
<b>Operating activities:</b>			
Net loss	\$ (46,119)	\$ (30,718)	\$ (2,153,926)
Adjustments to reconcile net loss to net cash used in operating activities:			
Stock-based compensation	1,424	2,378	42,871
Depreciation	102	134	4,354
Non-cash interest expense	4,978	3,910	52,242
Non-cash settlement of litigation matter			2,385
Unrealized foreign exchange (gains) losses	1,054	(503)	(7,429)
Loss on disposal of assets			11,117
Deferred income tax benefit			(103)
Impairment of property under construction			1,438,304
Gain on contract settlements			(74,955)
Gain on Nextel share-pledge derivative			(9,168)
Deferred tax credit			(121,928)
Realized losses on sale of investment securities	1,155		3,789
Unrealized losses on investment securities	2,462	4,509	15,448
Fair value adjustment for ARS Put Option	691		(4,441)
Amortization of capitalized SAN operator incentive			2,593
Cost of issuance of shares to distribution partners			37,440
Other			29,713
Other changes in certain assets and liabilities:			
Prepaid expenses and other current/non-current assets	5,302	(6,798)	46,832
Accrued interest income	7	79	109
Accounts payable	2,231	2,323	1,841
Accrued interest payable	17,262	5,142	74,610
Other accrued expenses	1,440	3,266	67,261
<b>Net cash used in operating activities</b>	<b>(8,011)</b>	<b>(16,278)</b>	<b>(541,041)</b>
<b>Investing activities:</b>			
Proceeds from launch insurance			225,000
Debtor in possession advance in relation to Old ICO			(275,000)
Acquisition of net assets of Old ICO			(117,590)
Cash received from Old ICO at acquisition			107,436
Restricted cash			(5,074)
Purchases of satellite system under construction	(3,974)	(26,753)	(414,533)
Purchases of property under construction			(497,890)
Purchases of property in service	(13)	(59)	(3,547)
Investment in unconsolidated subsidiaries			(2,373)
Purchases of other assets			(14,000)
Purchases of investment securities		(126,850)	(4,404,343)
Maturities and sales of investment securities	5,995	40,954	4,326,246

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Purchases of restricted investments			(94,283)
Maturities and sales of restricted investments			94,305
Proceeds from contract amendments			44,434
Proceeds from sale of assets			12,106
Net cash provided by (used in) investing activities	2,008	(112,708)	(1,019,106)
Financing activities:			
Net proceeds from issuance of common stock			625,353
Proceeds from exercise of stock options			139
Net proceeds from issuance of convertible notes			620,442
Net proceeds from working capital facility			37,539
Proceeds from sales of subsidiary stock and stock options			9,920
Payment of withholding taxes from stock awards	(91)		(927)
Advances from affiliates			324,395
Repayment of advances from affiliates			(324,395)
Repayment of note payable to Eagle River			(37,500)
Repayment of operator financing			(5,727)
Proceeds from pledge of Nextel shares			351,600
Proceeds from loan from Teledesic LLC			20,000
Acquisition of ICO shares from minority interest stockholder			(30,868)
Net cash provided by (used in) financing activities	(91)		1,589,971
Effect of foreign exchange rate changes on cash	(50)	301	(6,707)
Net increase (decrease) in cash and cash equivalents	(6,144)	(128,685)	23,117
Cash and cash equivalents beginning of period	29,261	146,657	
Cash and cash equivalents end of period	\$ 23,117	\$ 17,972	\$ 23,117

(continued)

**Table of Contents****ICO Global Communications (Holdings) Limited****(A Development Stage Enterprise)****Condensed Consolidated Statements of Cash Flows (Continued)****(In thousands, except share data, unaudited)**

	<b>Three months ended March 31,</b>		<b>February 9, 2000 (inception) to March 31, 2009 (development stage period)</b>
	<b>2009</b>	<b>2008</b>	
<b>Supplemental disclosures:</b>			
Income taxes paid	\$	\$ 366	\$ 7,870
Interest paid	339	56	150,948
Capitalized interest	704	9,745	98,154
<b>Supplemental disclosure of non-cash activities:</b>			
Issuance of Class A common shares in respect of investment in Ellipso, Inc.			6,863
Issuance of Class B common shares in respect of investment in Ellipso, Inc.			74
Issuance of Class A common shares in respect of investment in Constellation Communications Holdings, Inc.			904
Issuance of Class A common shares for settlement of litigation matter			2,385
Issuance of Class A common shares for advisory services	125	125	1,653
Issuance of Class A common shares for stock-based compensation	107		3,715
Increase (decrease) in accrued satellite system construction payable, net of liquidated damages	(956)	9,177	8,017
Equipment acquired in capital lease agreements			42,096
Issuance of warrants for the repayment of debt			4,950
Interest payment on convertible debt in the form of additional notes	29,964	27,569	86,276
The following securities of ICO arose from the acquisition of Old ICO's net assets:			
93,700,041 Class A common shares and options to acquire Class A common shares issued			679,873
31,003,382 Class B common shares issued			275,000
1,600,000 Class A common shares issued to distribution partners			16,720
200,000 Class A common shares committed to distribution partners			2,090
50,000,000 warrants issued to acquire Class A common shares			180,000

(concluded)

The accompanying notes are an integral part of these condensed consolidated financial statements.

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**ICO Global Communications (Holdings) Limited**

**(A Development Stage Enterprise)**

**Notes to Condensed Consolidated Financial Statements**

**(unaudited)**

**1. Organization and Business**

ICO Global Communications (Holdings) Limited ( ICO ), along with its subsidiaries (collectively referred to as Company ), is a next-generation mobile satellite service ( MSS ) operator. Through its majority owned subsidiary, ICO North America, Inc., along with its subsidiaries, ( ICO North America ), the Company is authorized by the U.S. Federal Communications Commission ( FCC ) to offer MSS throughout the United States using a geosynchronous earth orbit ( GEO ) satellite. The Company is currently developing an advanced next-generation hybrid mobile satellite service/ancillary terrestrial component system ( MSS/ATC System ) combining both satellite and terrestrial communications capabilities. The MSS/ATC System will allow the Company to provide wireless voice, video, data and/or Internet service throughout the United States on mobile and portable devices. The Company also continues to explore the development of a business plan outside of North America which would use its medium earth orbit ( MEO ) physical and regulatory assets.

On April 14, 2008, the Company successfully launched its first GEO satellite ( ICO G1 ) and, on May 9, 2008, certified to the FCC that its MSS system was operational, satisfying its final milestone. On May 30, 2008, the Company received its 2 GHz authorization and was granted its spectrum selection in the 2 GHz band, 2010 – 2020 MHz and 2180 – 2190 MHz frequency bands. On January 15, 2009, the FCC approved the Company's application to integrate ATC into its MSS system in order to provide integrated satellite and terrestrial services.

ICO North America is currently using ICO G1 to conduct an alpha trial of its ICO Mobile Interactive Media ( ICO mim ) service in the Las Vegas, Nevada and Raleigh-Durham, North Carolina markets ( Alpha Trial ). ICO mim combines the Company's unique interactive satellite capability with terrestrial network coverage to deliver mobile video services including live television content, navigation and enhanced roadside assistance.

**2. Development Stage Enterprise and Liquidity Issues**

The Company is a development stage enterprise as defined in Statement of Financial Accounting Standards ( SFAS ) No. 7, *Accounting and Reporting by Development Stage Enterprises* ( SFAS 7 ), and will continue to be so until it commences commercial operations. The development stage is from February 9, 2000 (inception) through March 31, 2009.

The Company is not currently generating revenue from operations and it may be unable to obtain the funding necessary to repay its debt obligations due in 2009, complete the construction of its MSS/ATC System and development of its ICO mim service, fund its future working capital requirements, or achieve positive cash flow from operations. As of March 31, 2009, the Company had a working capital deficit (current liabilities exceeded current assets) of \$822 million. This deficit is primarily due to the Company's \$40 million working capital facility due in May 2009 ( 2009 Credit Facility ), the Company's \$650 million aggregate principal amount of convertible notes due in August 2009 ( 2009 Notes ) and the Company's investments in student loan backed auction rate securities ( ARS ) primarily recorded as long-term available-for-sale and trading investments as described in Note 4.

As discussed in Notes 6 and 7, subsequent to March 31, 2009, ICO North America entered into a series of Forbearance Agreements in April 2009 and May 2009 with the administrative agent, the holders of the 2009 Credit Facility and the holders of a majority of the aggregate principal amount of the 2009 Notes ( Majority Note Holders ), among others, pursuant to which the administrative agent, the holders of the 2009 Credit Facility and the Majority Note Holders have agreed to temporarily forbear from exercising rights and remedies against ICO North America with respect to specified defaults under the 2009 Credit Facility and 2009 Notes. The forbearance agreements require ICO North America to obtain a commitment to fund the repayment of the 2009 Credit Facility or secure the no cost loans as outlined in the UBS ARS settlement agreement (described below) by May 15, 2009, in order to extend the forbearance periods through June 5, 2009. The Company is actively pursuing a refinancing of the 2009 Credit Facility and 2009 Notes in order to fund their maturity. Based on the current credit crisis and volatility in the capital markets, there is no assurance that this refinancing will be completed on terms acceptable to the Company, if at all. If the forbearance agreements terminate or if the debt is not refinanced, the 2009 Credit Facility and the 2009 Notes could be declared due and payable and remedies could be initiated against the collateral. The outcome of these events cannot be predicted at this time, which raises substantial doubt about the Company's ability to continue as a going concern. The accompanying financial statements do not include any adjustments relating to the recoverability or classification of assets or the amounts or classification of liabilities that might be necessary should the Company be unable

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to continue as a going concern.

Subject to the successful refinancing of its debt obligations, the Company intends to fund its remaining working capital needs for the next 12 months with cash on hand, liquidity generated from liquidation of its ARS and settlement activity related to its ARS as discussed below. To the extent the liquidation of its ARS and the ARS settlement activity does not generate sufficient liquidity required by the Company's operating plan, or the Company does not secure additional funding, the Company plans to significantly reduce its operating and development expenditures, which would include, among others, capital expenditures for the terrestrial network development of its MSS/ATC System, related personnel and vendor support, and other overhead.

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As described in Note 4, the Company holds ARS that have become illiquid as a result of failed auctions. As of March 31, 2009, the Company held ARS with a par value of approximately \$74.4 million and fair value of \$59.8 million. On November 14, 2008, the Company entered into a settlement agreement with UBS Financial Services, Inc. ( UBS ) whereby UBS agreed to purchase ARS it sold to the Company prior to February 13, 2008 which the Company still held ( Eligible ARS ). Under the terms of the settlement, at the Company's option, the Company can require UBS to purchase Eligible ARS from the Company at par value during the period of June 30, 2010 through July 2, 2012 ( ARS Put Option ). Conversely, UBS has the right, at its discretion, to purchase or sell the Eligible ARS at any time until July 2, 2012, so long as the Company receives payment at par value upon any sale or disposition. UBS will also provide the Company with access to loans for a period until June 30, 2010 for an amount up to 75% of the market value of Eligible ARS, subject to certain restrictions in the indenture governing the Company's 2009 Notes and 2009 Credit Facility. In addition, in December 2008, UBS reimbursed the Company \$1.8 million for losses incurred on the sale of Eligible ARS in July of 2008. As of March 31, 2009, the Company held Eligible ARS with a par value of approximately \$39.7 million. In April 2009, the Company sold \$7 million par value of its Eligible ARS for \$4.3 million of cash proceeds and sold \$3.5 million par value of its available-for-sale ARS for \$2.2 million of cash proceeds. Losses incurred on the sale of Eligible ARS in April 2009 are not recoverable from UBS.

**3. Summary of Significant Accounting Policies**

**Interim Financial Statements** The financial information included in the accompanying condensed consolidated financial statements is unaudited and includes all adjustments, consisting of normal recurring adjustments and accruals, considered necessary for a fair presentation. Certain information and footnote disclosures have been condensed or omitted. The financial information as of December 31, 2008, is derived from the Company's audited consolidated financial statements and notes, included in Item 8 in the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2008 ( 2008 10-K ), filed with the U.S. Securities and Exchange Commission ( SEC ) on March 31, 2009. The financial information included in this quarterly report should be read in conjunction with management's discussion and analysis of financial condition and results of operations and the consolidated financial statements and notes included in the Company's 2008 10-K. Operating results and cash flows for the interim periods presented are not necessarily indicative of the results that may be expected for the fiscal year ending December 31, 2009 or any other interim period.

**Use of Estimates** The preparation of financial statements requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Significant estimates are used when accounting for income taxes, contingencies, asset useful lives, valuation of ARS and valuation of stock-based compensation awards, among others. Actual results could differ from those estimates. Estimates are evaluated on an ongoing basis.

**Cash and Cash Equivalents** Cash and cash equivalents are defined as short-term, highly liquid investments with original maturities from the date of purchase of 90 days or less. Cash and cash equivalents are comprised of the following (in thousands):

	March 31, 2009	December 31, 2008
Cash	\$ 2,917	\$ 2,334
Money market funds	20,200	26,927
	\$ 23,117	\$ 29,261

**Short-Term and Long-Term Investments** As of March 31, 2009 and December 31, 2008, the Company's short-term and long-term investments were held in ARS and classified as trading or available-for-sale. Trading securities are recorded at fair value with unrealized holdings gains and losses included in net loss in the accompanying condensed consolidated statements of operations. Available-for-sale securities are recorded at fair value, and any unrealized holding gains or losses are recorded, net of tax, in stockholders' deficiency in assets as a component of accumulated other comprehensive income in the accompanying condensed consolidated balance sheets. The Company's investments are measured using quoted prices in active markets, or valued based on other observable and unobservable inputs within the hierarchy established in SFAS No. 157, *Fair Value Measurements* ( SFAS 157 ), which the Company adopted on January 1, 2008. Unrealized losses on available-for-sale securities are charged against net income (loss) when the fair value is below the cost basis and the decline is determined to be other-than-temporary. Management reviews several factors to determine whether a loss is other-than-temporary, including the length of time a security is in an unrealized loss position, the extent to which fair value is less than amortized cost, the impact of changing interest rates in the short and long term, the financial condition and near-term prospects of the issuer, and the Company's ability and intent to hold the security until maturity or for a period of time sufficient to allow for any anticipated recovery in fair value. Realized gains and losses are accounted for using the specific identification method. Purchases and sales are recorded on a trade date basis. The Company does not currently hold any derivative

financial instruments.

***Prepaid Expenses and Other Current Assets*** Prepaid expenses and other current assets consist primarily of payments made for satellite in-orbit insurance and debt issuance costs incurred in connection with issuance of the 2009 Credit Facility. Upon completion of satellite system in-orbit testing in December 2008, the Company began amortizing satellite in-orbit insurance costs. These costs are being amortized using the straight-line method through April 2009.

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**Property in Service** Property in service consists primarily of computer equipment, software, furniture and fixtures and leasehold improvements. Property in service is recorded at cost, net of accumulated depreciation, and is depreciated using the straight-line method. Computer equipment and furniture and fixtures are depreciated over their estimated useful lives ranging from three to five years. Software is depreciated over the shorter of its contractual license period or three years. Leasehold improvements are amortized over the shorter of their estimated useful lives or the term of the respective lease. Significant additions and improvements to property in service are capitalized. Repair and maintenance costs are expensed as incurred.

**Satellite System Under Construction** Satellite system under construction includes third-party construction and engineering costs incurred in the design, manufacture, test and launch of the MSS/ATC System, satellite launch insurance costs, performance incentives expected to be paid to the Company's satellite manufacturer, costs incurred for the procurement of equipment and technology for use in the ICO mim service and capitalized interest associated with the construction of its MSS/ATC System and ICO mim service to the extent these assets have future benefits. Interest capitalized to satellite system under construction for the three months ended March 31, 2009 and 2008 was \$704,000 and \$9.7 million, respectively. Satellite system under construction will be classified as property in service when the respective assets are placed into service and will be depreciated using the straight-line method based on the anticipated useful lives of the assets ranging from 5 to 15 years.

**Other Assets** As of March 31, 2009 and December 31, 2008, other assets primarily consisted of an ARS Put Option associated with the UBS settlement agreement (see Note 4). The Company's ARS Put Option is a separate freestanding instrument, accounted for separately from the ARS. The Company has elected to measure the ARS Put Option at fair value under SFAS No. 159, *The Fair Value Option for Financial Assets and Financial Liabilities Including an amendment of FASB Statement No. 115* (SFAS 159).

**Impairment of Long-Lived Assets** Pursuant to SFAS No. 144, *Accounting for the Impairment or Disposal of Long-Lived Assets*, the carrying values of long-lived assets are reviewed whenever events or changes in circumstances indicate that their carrying value may not be recoverable. Management considers whether specific events have occurred in determining whether long-lived assets are impaired at each balance sheet date or whenever events or changes in circumstances indicate that the carrying value of an asset may not be recoverable. The determination of whether impairment exists is based on any excess of the carrying value over the expected future cash flows. Any resulting impairment charge is measured based on the difference between the carrying value of the asset and its fair value, as estimated using undiscounted future cash flows expected to be generated by the assets. No impairment of long-lived assets was determined as a result of our analyses as of March 31, 2009 and December 31, 2008.

**Debt Issuance Costs** Costs incurred in connection with the issuance of the 2009 Credit Facility and 2009 Notes have been capitalized and are included in prepaid expenses and other current assets and debt issuance costs on the Company's condensed consolidated balance sheets. Debt issuance costs associated with the 2009 Credit Facility are being amortized using the effective interest method from April 2008 through maturity in May 2009. Debt issuance costs associated with the 2009 Notes are being amortized using the effective interest method from issuance in August 2005 through maturity in August 2009. Amortization of debt issuance costs is included in interest expense in the condensed consolidated statements of operations. Amortization of debt issuance costs for the three months ended March 31, 2009 and 2008 was \$2.7 million and \$1.9 million, respectively.

**Deferred Satellite Performance Incentives** The Company has certain contracts with its satellite manufacturer that may require the Company to make future in-orbit performance incentive payments over the design life of ICO G1. These satellite performance incentives are payable in future periods ranging from one to 15 years dependent on the continued satisfactory performance of ICO G1. The Company records the net present value of these expected future payments as a liability and capitalizes these incentive payments as a component of the cost of the satellite. As of March 31, 2009 and December 31, 2008, the Company has accrued \$10.7 million and \$10.9 million related to its contingent satellite performance incentives, of which \$1.4 million and \$1.7 million has been classified as current and \$9.3 million and \$9.2 million has been classified as long-term, respectively.

**Fair Value of Financial Instruments** Financial instruments include cash and cash equivalents, available-for-sale securities, trading securities, ARS Put Option, accounts payable, the 2009 Credit Facility, the 2009 Notes and certain other assets and accrued liabilities. The Company determines the fair value of its financial instruments based on the hierarchy established by SFAS 157. The three levels of inputs used to measure fair value are as follows:

Level 1 Quoted prices in active markets for identical assets and liabilities.

Level 2 Quoted prices in active markets for similar assets and liabilities or other inputs that are observable for the asset or liability, either directly or indirectly, for substantially the full term of the financial instrument.

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Level 3 Unobservable inputs that are supported by little or no market activity and are significant to the fair value of the assets and liabilities. This includes certain pricing models, discounted cash flow methodologies and similar techniques that use significant unobservable inputs.

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As of March 31, 2009, the fair value of the Company's available-for-sale securities, trading securities and ARS Put Option was determined using Level 2 and Level 3 inputs (see Note 4). The carrying amounts of all other financial instruments are reasonable estimates of their fair values because they are equivalent to cash or due to their short-term nature.

**Accumulated Other Comprehensive Income** As of March 31, 2009 and December 31, 2008, the Company's accumulated other comprehensive income consisted of cumulative translation adjustments of \$8.3 million and \$6.7 million, respectively.

**Revenue Recognition** The Company is a development stage enterprise and does not currently have any revenue from operations.

**Research and Development Costs** Research and development costs, consisting of third-party engineering, consulting and development costs associated with technology being considered for use in the Company's MSS/ATC System and ICO mim service, as well as costs associated with an evaluation of the usability of the Company's MEO satellite system, are expensed as incurred. The Company reviews each of its research and development projects to determine if technological feasibility has been achieved, at which point, future development costs associated with that project are capitalized.

**Contract Settlements** With respect to disputed contracts, the Company continues to record expenses according to its contractual obligation until such contract is terminated. Upon termination, and prior to settlement, the Company continues to accrue estimated late payment fees and interest expense, as applicable. Upon reaching settlement, whereby the other party's claims are legally released, the Company extinguishes its recorded liability, resulting in the recognition of a gain or loss on contract settlement.

**Share-Based Payment** The Company records stock-based compensation in accordance with SFAS No. 123 (revised 2004), *Share-Based Payment* (SFAS 123(R)). SFAS 123(R) requires measurement of all share-based payment awards based on the estimated fair value on the date of grant and the recognition of compensation cost over the requisite service period for awards expected to vest.

The Company records stock-based compensation on stock options and restricted stock awards issued to employees, directors and consultants. The fair value of stock options is estimated on the date of grant using the Black-Scholes option pricing model (Black-Scholes Model) based on the single option award approach. The fair value of restricted stock awards is determined based on the number of shares granted and the quoted market price of the Company's Class A common stock on the date of grant. The fair value of stock options is amortized to expense on a straight-line basis over the requisite service periods of the awards, which is generally the vesting period. The fair value of restricted stock awards with performance conditions is amortized to expense over the requisite service period using the accelerated method of expense recognition. The fair value of share-based payment awards as determined by the Black-Scholes Model is affected by the Company's stock price as well as other assumptions. These assumptions include, but are not limited to, the expected stock price volatility over the term of the awards and actual and projected employee stock option exercise behaviors. SFAS 123(R) requires forfeitures to be estimated at the date of grant and revised, if necessary, in subsequent periods if actual forfeitures differ from those estimates.

**Foreign Currency Translation and Foreign Currency Transactions** The reporting currency for the Company's operations is U.S. dollars. The Company translates the activities of its subsidiaries with functional currencies other than the U.S. dollar during the period at the average exchange rate prevailing during the period. Assets and liabilities denominated in foreign currencies are translated at the exchange rates prevailing at the balance sheet date. Translation adjustments resulting from these processes are recognized as a component of accumulated other comprehensive income (loss). The Company recognizes applicable cumulative translation adjustments as a component of operating income (loss) in the period in which a subsidiary is substantially liquidated. For the three months ended March 31, 2009 and 2008, there were no gains or losses resulting from the liquidation of subsidiaries.

Gains and losses on foreign currency transactions are recognized as a component of other income (expense) in the condensed consolidated statements of operations in the period in which they occur. For the three months ended March 31, 2009 and 2008, losses on intercompany foreign currency transactions of \$5.8 million and gains on intercompany foreign currency transactions of \$4.7 million, respectively, have been excluded from net loss and reported as a component of accumulated other comprehensive income due to their long-term investment nature.

**Loss Per Share** Basic loss per share is calculated based on the weighted average number of common shares outstanding during the period. Diluted loss per share is calculated by dividing loss allocable to common shareholders by the weighted average common shares outstanding plus dilutive potential common stock. Dilutive potential common stock includes unvested restricted stock awards, stock options and warrants, the dilutive effect of which is calculated using the treasury stock method. Prior to the satisfaction of vesting conditions, unvested restricted stock awards are considered contingently issuable consistent with SFAS No. 128, *Earnings Per Share*, and are excluded from weighted average common shares outstanding.



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The following table sets forth the computation of basic and diluted loss per share (in thousands, except share and per share data):

	Three months ended March 31,	
	2009	2008
Net loss	\$ (46,119)	\$ (30,718)
Weighted average common shares outstanding	207,757,516	199,054,189
Less: weighted average unvested restricted stock awards	(318,456)	(630,000)
Shares used for computation of basic and diluted loss per share(1)	207,439,060	198,424,189
Basic and diluted loss per share	\$ (0.22)	\$ (0.15)

(1) The effect of certain stock options and warrants was anti-dilutive, and they were not included in the calculation of diluted loss per share. As of March 31, 2009 and 2008, anti-dilutive stock options and warrants totaled 17,686,933 and 16,134,433, respectively. If the 2009 Notes were converted into Class A common stock of ICO North America, the Company's future earnings would be diluted as the Company's ownership interest in ICO North America would be reduced to approximately 52%.

**New Accounting Pronouncements** In December 2007, the Financial Accounting Standards Board ( FASB ) issued SFAS No. 141(R), *Business Combinations* ( SFAS 141(R) ). The new standard requires the acquiring entity in a business combination to recognize all (and only) the assets acquired and liabilities assumed in the transaction; establishes the acquisition-date fair value as the measurement objective for all assets acquired and liabilities assumed; requires transaction costs to be expensed as incurred; and requires the acquirer to disclose to investors and other users all of the information they need to evaluate and understand the nature and financial effect of the business combination. SFAS 141(R) is to be applied prospectively to business combinations for which the acquisition date is on or after January 1, 2009. Early adoption is not permitted. The adoption of this statement did not have a material impact on the Company's financial position, results of operations or cash flows.

In December 2007, the FASB issued SFAS No. 160, *Noncontrolling Interests in Consolidated Financial Statements, an amendment of ARB Statement No. 51* ( SFAS 160 ). SFAS 160 amends Accounting Research Bulletin No. 51, *Consolidated Financial Statements*, to establish accounting and reporting standards for the noncontrolling interest in a subsidiary and for the deconsolidation of a subsidiary. SFAS 160 clarifies that a noncontrolling interest in a subsidiary should be reported as equity in the consolidated financial statements. SFAS 160 is effective for financial statements issued for fiscal years beginning after December 15, 2008. Early adoption is prohibited. The adoption of this statement did not have a material impact on the Company's financial position, results of operations or cash flows.

In March 2008, the FASB issued SFAS No. 161, *Disclosures About Derivative Instruments and Hedging Activities - an amendment of FASB Statement No. 133* ( SFAS 161 ). SFAS 161 expands the disclosure requirements in SFAS No. 133, *Accounting for Derivative Instruments and Hedging Activities* ( SFAS 133 ), about an entity's derivative instruments and hedging activities. SFAS 161 is effective for financial statements issued for fiscal years and interim periods beginning after November 15, 2008. The adoption of this statement did not have a material impact on the Company's financial position, results of operations, cash flows or disclosures.

In May 2008, the FASB issued FASB Staff Position ( FSP ) APB 14-1, *Accounting for Convertible Debt Instruments That May Be Settled in Cash upon Conversion (Including Partial Cash Settlement)* ( FSP APB 14-1 ). FSP APB 14-1 clarifies that convertible debt instruments that may be settled in cash upon conversion are not addressed by paragraph 12 of APB 14, *Accounting for Convertible Debt and Debt issued with Stock Purchase Warrants* ( APB 14 ). Additionally, FSP APB 14-1 specifies that issuers of such instruments should separately account for the liability and equity components in a manner that will reflect the entity's nonconvertible debt borrowing rate when interest cost is recognized in subsequent periods. FSP APB 14-1 is effective for financial statements issued for fiscal years beginning after December 15, 2008, and interim periods within those fiscal years. The adoption of this statement did not have a material impact on the Company's financial position, results of operations or cash flows.

In April 2009, the FASB issued FSP FAS 157-4, *Determining Fair Value When the Volume and Level of Activity for the Asset or Liability Have Significantly Decreased and Identifying Transactions That Are Not Orderly* ( FSP FAS 157-4 ). FSP FAS 157-4 provides additional guidance in determining fair values when there is no active market or where the price inputs being used represent distressed sales. It reaffirms what SFAS

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157 states is the objective of fair value measurement to reflect how much an asset would be sold for in an orderly transaction (as opposed to a distressed or forced transaction) at the date of the financial statements under current market conditions. FSP FAS 157-4 is effective for interim reporting periods ending after June 15, 2009, with early adoption permitted for periods ending after March 15, 2009. The Company plans to adopt the provisions of this FSP during the second quarter of 2009 and is currently assessing the impact on its financial position, results of operations and cash flows.

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In April 2009, the FASB issued FSP FAS 107-1 and APB 28-1, *Interim Disclosures about Fair Value of Financial Instruments* ( FSP FAS 107-1 and APB 28-1 ). FSP FAS 107-1 and APB 28-1 requires disclosures of qualitative and quantitative information about fair value for any financial instruments that are not currently reflected on the balance sheet of companies on a quarterly basis. FSP FAS 107-1 and APB 28-1 is effective for interim reporting periods ending after June 15, 2009, with early adoption permitted for periods ending after March 15, 2009. The Company plans to adopt the provisions of this FSP during the second quarter of 2009 and is currently assessing the impact on its financial statement disclosures.

In April 2009, the FASB issued FSP FAS 115-2 and FSP FAS 124-2, *Recognition and Presentation of Other-Than-Temporary Impairments* ( FSP FAS 115-2 and FAS 124-2 ). FSP FAS 115-2 and FAS 124-2 amends other-than-temporary impairment guidance in U.S. GAAP for debt securities to make the guidance more operational and to improve the presentation and disclosure of other-than-temporary impairments on debt and equity securities in the financial statements. This FSP does not amend existing recognition and measurement guidance related to other-than-temporary impairments of equity securities. The Company plans to adopt the provisions of this FSP during the second quarter of 2009 and is currently assessing the impact on its financial position, results of operations, cash flows and disclosures.

### **4. Investments**

As of March 31, 2009 and December 31, 2008, all of the Company's investments were held in ARS, of which approximately \$27.6 million and \$35.2 million were classified as available-for-sale securities and \$32.3 million and \$34.2 million were classified as trading securities, respectively. The Company's ARS are reflected at their estimated fair value on the condensed consolidated balance sheets.

As of March 31, 2009, the Company held ARS with a par value of approximately \$74.4 million and fair value of \$59.8 million. These ARS consisted of variable rate bonds, with maturities ranging from 22 to 39 years, for which the interest rates normally reset through a dutch auction each month. As a result of the impact of the current conditions in the global financial markets, these ARS have experienced multiple failed auctions as the amount of securities submitted for sale has exceeded the amount of purchase orders. Therefore, the ARS cannot be liquidated until: (i) a successful auction occurs; (ii) the issuers of the ARS call the ARS at par; (iii) a liquid market develops for these ARS; or (iv) settlements by financial institutions which underwrote these securities become effective. These events may not occur for a period longer than one year. As of March 31, 2009, the Company had received cash proceeds of \$6 million for ARS that have been called at par. In addition, the Company sold ARS with a par value of \$15.4 million for \$12.7 million of cash proceeds in July 2008 and sold ARS with a par value of \$7 million for \$5.8 million of cash proceeds in January 2009. In April 2009, the Company sold \$10.5 million par value of its ARS for cash proceeds of \$6.5 million. The fair value of the ARS sold in April 2009 has been classified as short-term available-for-sale and short-term trading investments on the Company's condensed consolidated balance sheet at March 31, 2009. The Company has classified all other ARS as long-term investments on its condensed consolidated balance sheet at March 31, 2009 as it is unlikely the Company will be able to liquidate these investments within one year.

On November 14, 2008, the Company entered into a settlement agreement with UBS whereby UBS would purchase Eligible ARS it sold to the Company prior to February 13, 2008. Under the terms of the settlement, at the Company's option, the Company may require UBS to purchase Eligible ARS from the Company at par value during the period of June 30, 2010 through July 2, 2012. Conversely, UBS has the right, at its discretion, to purchase or sell the Eligible ARS at any time until July 2, 2012, so long as the Company receives payment at par value upon any sale or disposition. The Company has elected to apply the provisions of SFAS 159 to its ARS Put Option and record the ARS Put Option at fair value with changes in fair value recorded in earnings each period. As of March 31, 2009 and December 31, 2008, the ARS Put Option was valued at \$4.4 million and \$5.1 million, respectively, and is reflected in other assets on the condensed consolidated balance sheet. The Company expects that future changes in the fair value of the ARS Put Option will approximate the fair value movements in the underlying ARS.

Prior to entering into the UBS settlement agreement, the Company recorded its Eligible ARS as available-for-sale investments. In connection with acceptance of the UBS settlement agreement in November 2008, the \$39.7 million par value of Eligible ARS were transferred to a long-term trading classification on the condensed consolidated balance sheets and are being recorded at fair value with unrealized gains and losses recorded in earnings each period. The transfer to trading securities reflects management's intent to exercise its ARS Put Option during the period June 30, 2010 to July 3, 2012. Prior to the Company's agreement with UBS, management's intent was to hold the Eligible ARS until the market recovered. The Company recognized a decline in the fair value of its Eligible ARS of \$1.9 million in the first quarter of 2009, which has been recorded as other expense on the Company's condensed consolidated statements of operations.

In addition, per the settlement agreement, UBS agreed to reimburse the Company for any losses incurred on the sale of Eligible ARS during a specified period. In December 2008, UBS reimbursed the Company \$1.8 million for losses incurred on the sale of Eligible ARS in July of 2008. This reimbursement was recorded as other income (expense) on the Company's consolidated statements of operations for the year ended December 31, 2008. As part of the settlement agreement, UBS will also provide the Company with access to loans for a period until June 30, 2010 for an amount up to 75% of the market value of Eligible ARS, subject to certain restrictions in the indenture governing the Company's 2009 Notes and 2009 Credit Facility.



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Typically, the fair value of ARS approximate par value due to the frequent resets of interest rate through the auction process. While the Company continues to earn interest on its ARS at the maximum contractual rate, these investments are not currently trading and therefore do not currently have a readily determinable market value. Accordingly, the estimated fair value of ARS no longer approximates par value. As such, the Company has used a discounted cash flow model to determine the estimated fair value of its ARS classified as long-term investments at March 31, 2009. The assumptions used in preparing the discounted cash flow model are Level 3 inputs. Some of the inputs are unobservable in the market and have a significant effect on the valuation. The observable and unobservable inputs include, but are not limited to, periodic coupon rates, market required rates of return and the expected term of each security. The coupon rate was estimated using implied forward rate data on U.S. treasuries and interest rate swaps and limited, where necessary, by any contractual maximum rate paid under a scenario of continuing auction failures. In making assumptions of the market required rates of return, the Company considered historical credit spreads and applied an illiquidity premium to the credit spreads. The expected term for the ARS was based on a weighted probability-based estimate of the time the principal will become available to the Company. The estimated fair value of the Company's ARS classified as short-term investments at March 31, 2009 was determined based upon actual proceeds received from the sale of these investments on April 2, 2009.

The following table summarizes the fair value of the Company's investments and ARS Put Option by the different levels of inputs required by SFAS 157 as of March 31, 2009 (in thousands):

		Fair value measurement using:			
		Significant			
		Total	Quoted	other	Significant
		fair	market	observable	unobservable
		value	prices	inputs	inputs
			(Level 1)	(Level 2)	(Level 3)
Short-term investments	available-for-sale securities	\$ 2,170	\$	\$ 2,170	\$
Short-term investments	trading securities	4,340		4,340	
Long-term investments	available-for-sale securities	25,382			25,382
Long-term investments	trading securities	27,923			27,923
ARS Put Option		4,441			4,441

The following table summarizes the change in fair value of the Company's assets measured at fair value on a recurring basis using significant unobservable inputs (Level 3) for the three months ended March 31, 2009 (in thousands):

	Investments	ARS Put Option
Fair value, January 1, 2009	\$ 69,385	\$ 5,132
Purchases, issuances and settlements, net	(5,995)	
Unrealized losses included in net loss	(2,462)	(691)
Realized losses included in net loss	(1,155)	
Interest accretion on other-than-temporary impairment	42	
Transfers out of Level 3 due to changes in observability of significant inputs	(6,510)	
Fair value, March 31, 2009	\$ 53,305	\$ 4,441

Consistent with the guidance provided in FASB Staff Position FAS 115-1 and 124-1, *The Meaning of Other-Than-Temporary Impairment and Its Application to Certain Investments*, the Company evaluates its available-for-sale investments for other-than-temporary impairment. As of March 31, 2009, individual securities with a fair value below the cost basis were evaluated to determine if they were other-than-temporarily impaired. In determining whether the decline in fair value was other-than-temporary, the Company considered various factors including market price (when available), investment ratings, the financial condition and near-term prospects of the issuer, the length of time and the extent to which the fair value has been less than the cost basis, and its intent and ability to hold the investment until maturity or for a period of time sufficient to allow for any anticipated recovery in market value.

Based on the Company's analysis of its portfolio of available-for-sale ARS, the uncertainty in the global financial market, its assessment of the period until recovery and its liquidity needs during the period until recovery, the Company determined that the decline in the fair value of its available-for-sale ARS as of March 31, 2009 was other-than-temporary. For the three months ended March 31, 2009, the Company recognized a pre-tax other-than-temporary impairment charge of \$2.5 million as other expense on its condensed consolidated statements of operations. The

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Company did not record any unrealized gains or losses as a component of other comprehensive income (loss) relating to investments held at March 31, 2009.

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As part of the ground infrastructure for its MEO satellite system, the Company established satellite access node ( SAN ) sites in eleven countries throughout the world. Prior to 2000, the Company entered into noncancellable agreements with certain vendors ( SAN Operators ) that own and operate the Company 's SAN sites. All of the agreements provide for varying levels of support required to operate the SAN sites ( SAN Operating Agreements ). Additionally, certain of the agreements require the repayment of certain up-front infrastructure costs incurred on the Company 's behalf ( SAN Infrastructure Agreements ) that represent capital leases payable with initial interest rates ranging from 8.5% to 20%.

Over the past several years, the Company has significantly curtailed further construction on its MEO satellite system which has increased the likelihood that many of these SAN sites would not be utilized in a timely fashion in the contemplated MEO satellite system. As a result, eight of the ten SAN Operators have terminated their agreements with the Company and discontinued providing the requisite level of services. Certain of the terminated agreements were settled in exchange for a nominal level of consideration, including cash and the transfer of certain SAN assets. Certain of the terminated agreements have not been settled and remain outstanding.

Subsequent to the date of termination, the Company has continued to accrue estimated late payment fees, if applicable, and the interest expense on the capital leases in effect pursuant to the SAN Infrastructure Agreements. Upon reaching settlement with the SAN Operator where the SAN Operator 's claims are legally released, the Company has written off the liability, resulting in the recognition of a gain on contract settlement.

The following table sets forth a summary of the transactions with the Company 's various SAN Operators (in thousands):

	<b>Three months ended March 31,</b>	
	<b>2009</b>	<b>2008</b>
Total SAN liability, beginning of period	\$ 49,966	\$ 49,193
Expense recognized under SAN Operating Agreements	522	516
Interest expense related to SAN Infrastructure Agreements	831	962
Payments made to SAN Operators	(244)	(517)
Effect of changes in foreign currency exchange rates	(111)	631
 Total SAN liability, end of period	 \$ 50,964	 \$ 50,785

The following table summarizes the Company 's total SAN liability with its SAN Operators and is included in the following line items on the condensed consolidated balance sheets (in thousands):

	<b>March 31, 2009</b>	<b>December 31, 2008</b>
Accrued expenses	\$ 16,731	\$ 16,450
Accrued interest (current portion)	17,363	16,596
Current portion of capital lease obligations	16,287	15,624
Capital lease obligations, less current portion	583	1,296
	<b>\$ 50,964</b>	<b>\$ 49,966</b>

**6. Working Capital Facility**

On March 27, 2008, ICO North America entered into a credit agreement with Jefferies & Company, Inc., among others, for a working capital facility of \$40 million. The transaction closed on April 7, 2008 at which time the entire amount of the facility was drawn. The 2009 Credit Facility matures on May 1, 2009 and bears interest at a rate of 12.5% per year which is payable at maturity. On December 31, 2008, accrued interest on the 2009 Credit Facility was added to the outstanding principal balance in accordance with the terms of the credit agreement. As of March 31, 2009, the total amount due at maturity is expected to be \$45.6 million. The 2009 Credit Facility is guaranteed by ICO North America and is collateralized by a first priority lien on substantially all of the assets of ICO North America. Proceeds from the 2009 Credit Facility are being used to provide necessary cash flow for operations.

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ICO North America has the option of repaying the facility at a premium of 2.5% to face value if repayment occurs within six months of the closing date, with the premium declining ratably thereafter to par at maturity. ICO North America will be required to prepay the facility in the event of any extraordinary receipts and certain asset sales, including 50% of the cumulative proceeds from the sale of ARS that exceed \$57 million, with the proceeds of certain issuances of debt and capital stock, and in certain circumstances with insurance and condemnation proceeds.

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The 2009 Credit Facility contains other terms, conditions and affirmative and negative covenants, including prohibitions or restrictions (subject to qualifications and exceptions) on the ability of ICO North America to: (i) issue other first lien debt; (ii) declare dividends or make other distributions; (iii) issue capital stock; (iv) make loans or investments (including acquisitions); (v) incur additional indebtedness; (vi) grant liens; (vii) enter into sale-leaseback transactions; (viii) prepay or modify the terms of the 2009 Notes; (ix) modify the terms of certain other material agreements; (x) enter into new lines of business; (xi) recapitalize, merge, consolidate or enter into certain acquisitions; (xii) sell its assets; and (xiii) enter into certain transactions with its affiliates. In addition, ICO North America is required to maintain liquidity, which is defined as cash, cash equivalents and the market value of ARS, of \$5 million.

On April 3, 2009, ICO North America entered into a forbearance agreement ( Forbearance Agreement ) with the administrative agent and the holders of the 2009 Credit Facility, among others, pursuant to which the administrative agent and the holders of the 2009 Credit Facility have agreed to temporarily forbear from exercising rights and remedies against ICO North America with respect to specified defaults under the 2009 Credit Facility arising from the fact that the ICO North America 2008 consolidated financial statements contained an explanatory paragraph regarding substantial doubt about its ability to continue as a going concern ( Going Concern Default ). The Forbearance Agreement was effective until the earlier of May 1, 2009 (the maturity date for the 2009 Credit Facility) or a termination event, as defined under the Forbearance Agreement. In consideration for the Forbearance Agreement, ICO North America paid a fee equal to 0.75% of the existing principal and the default interest rate provided under the 2009 Credit Facility increased to 14.5% during the term of the Forbearance Agreement.

On May 1, 2009, ICO North America entered into an additional forbearance agreement dated as of April 30, 2009 ( Second Forbearance Agreement ) with the administrative agent and the holders of the 2009 Credit Facility, among others, pursuant to which the administrative agent and the holders of the 2009 Credit Facility have agreed to temporarily forbear from exercising rights and remedies against ICO North America with respect to specified defaults under the 2009 Credit Facility arising from the fact that ICO North America failed to repay the 2009 Credit Facility and related obligations on the maturity date of May 1, 2009 ( Payment Default ), as well as the Going Concern Default. The Second Forbearance Agreement is effective until the earlier of May 15, 2009 or a termination event, as defined under the Second Forbearance Agreement. The Second Forbearance Agreement can be extended for an additional three week period in certain circumstances if ICO North America is able to obtain a commitment to fund the repayment of the 2009 Credit Facility or is able to secure the no cost loans as outlined in the UBS settlement agreement. ICO North America must meet a number of conditions for the continued effectiveness of the Second Forbearance Agreement. In consideration for the Second Forbearance Agreement, ICO North America is paying a fee equal to 1.25% of the existing principal and interest will be paid during the term of the Second Forbearance Agreement at a rate of 16.0%. In the event there is a partial repayment of the 2009 Credit Facility, the fee will be refunded. If the Second Forbearance Agreement terminates, a majority of the holders of the 2009 Credit Facility or the administrative agent could declare the 2009 Credit Facility due and payable and initiate remedies against the collateral.

**7. Convertible Debt**

In August 2005, ICO North America completed the sale of \$650 million aggregate principal amount of convertible notes to Qualified Institutional Buyers pursuant to the exemption from the registration requirements of the Securities Act of 1933, as amended, provided by Rule 144A thereunder. The net proceeds from the sale of the 2009 Notes are being used to develop the Company's MSS/ATC System and ICO mim service and to fund operating expenses.

The 2009 Notes mature in August 2009 and bear interest at a rate of 7.5% per year, payable semi-annually in arrears in cash on February 15 and August 15. Subject to certain exceptions, for the period from August 16, 2007 through August 15, 2009, ICO North America has the option of paying accrued interest due with additional notes in lieu of cash at an increased interest rate of 8.5% per annum. ICO North America elected to make its February 15, 2008, August 15, 2008 and February 15, 2009 interest payments of \$27.6 million, \$28.8 million and \$30 million, respectively, in the form of additional notes. Therefore, the rate used to accrue interest on the outstanding 2009 Notes has been adjusted to 8.5% per annum effective August 16, 2007. The Company anticipates making future interest payments in the form of additional notes as well which will result in \$767.6 million due at maturity.

The 2009 Notes are convertible, at the option of the holder, into ICO North America's Class A common stock. The initial conversion price of the 2009 Notes was \$4.25 per share, subject to adjustment pursuant to the indenture. The conversion price was subsequently adjusted to \$4.06 per share as explained below. Additionally, the 2009 Notes will automatically convert into shares of ICO North America's Class A common stock upon a qualifying private offering or sale, a qualifying public offering of ICO North America's common stock or upon written consent of holders owning two-thirds of the 2009 Notes. If all of the 2009 Notes were converted into Class A common stock of ICO North America, the Company's ownership interest in ICO North America would be reduced to approximately 52%. Holders of the 2009 Notes also have the right of first offer on any equity securities of ICO North America subject to certain exemptions and conditions.

The 2009 Notes contain embedded beneficial conversion features contingent upon the occurrence, or non-occurrence, of certain future events, including lack of completion by ICO North America of a qualified public offering by August 15, 2007, the issuance of ICO North America Class A common stock and the issuance of options or warrants to purchase ICO North America Class A common stock. The Company has

accounted for these beneficial conversion features in accordance with Emerging Issue Task Force ( EITF )

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Issue No. 98-5, *Accounting for Convertible Securities with Beneficial Conversion Features or Contingently Adjustable Conversion Ratios* and EITF Issue No. 00-27, *Application of Issue No. 98-5 to Certain Convertible Instruments*. The value of the embedded beneficial conversion feature associated with the lack of completion by ICO North America of a qualified public offering was initially measured and recognized at the commitment date, August 15, 2005. The value of all other embedded beneficial conversion features of the 2009 Notes will be measured at the time such events occur, if at all.

The value of the embedded beneficial conversion feature associated with the lack of completion by ICO North America of a qualified public offering was initially calculated based on a 2% premium on the fully diluted shares outstanding as of August 15, 2005. This beneficial conversion feature resulted in a reduction to the conversion price of the 2009 Notes from \$4.25 per share to \$4.06 per share. The total value of the beneficial conversion feature was determined to be approximately \$30 million, which was recorded as a reduction in the 2009 Notes and an increase to additional paid-in capital at August 15, 2005, and is being recognized as interest expense over the life of the 2009 Notes using the effective interest method. In accordance with EITF Issue No. 05-8, *Income Tax Consequences of Issuing Convertible Debt with a Beneficial Conversion Feature*, the Company recorded a deferred tax liability of \$10.2 million in 2005 related to the tax treatment of this beneficial conversion feature, and reduced its valuation allowance by an offsetting amount. As of August 15, 2007, ICO North America had not completed a qualifying public offering. The non-occurrence of this event triggered re-measurement of the value of the embedded beneficial conversion feature associated with the lack of completion by ICO North America of a qualified public offering. This re-measurement resulted in additional value to the beneficial conversion feature equal to approximately \$304,000, with a related income tax effect of \$103,000. The \$103,000 was recorded as a reduction to additional paid-in capital and as an income tax benefit for the year ended December 31, 2007.

The 2009 Notes have a registration rights agreement whereby a majority of the holders of the 2009 Notes can demand at any time, starting on August 15, 2008, that the Company register the ICO North America shares. If the Company fails to register the ICO North America shares within 60 days of a demand, or the registration of the ICO North America shares has not been declared effective by the SEC within 120 days, the interest rate on the 2009 Notes increases by 1% every 90 days up to a maximum of 13.5%. This additional interest would be required to be paid in cash. As of April 30, 2009, the maximum amount of additional interest expense the Company could incur if it failed to register the ICO North America shares would be approximately \$948,000 through the maturity of the 2009 Notes. No demand for registration has been made to date, and the Company currently believes that it is not probable it will be required to remit any additional interest to the holders of the 2009 Notes for failing to obtain an effective registration statement.

The 2009 Notes also contain covenants including, but not limited to, restrictions on ICO North America's future indebtedness and the payment of dividends. In addition, all of ICO North America's stock is pledged and all of its existing and future assets are held as collateral for the 2009 Notes.

On May 1, 2009, ICO North America entered into a forbearance agreement dated as of April 30, 2009 ( *Note Forbearance Agreement* ) with the Majority Note Holders and the trustee, among others, pursuant to which the Majority Note Holders have agreed to, and to direct the trustee to, temporarily forbear from exercising rights and remedies against ICO North America with respect to the Payment Default. The Note Forbearance Agreement contains a term and conditions similar to the Second Forbearance Agreement as discussed in Note 6, as well as additional terms, but does not require payment. In addition, the Notes Forbearance Agreement contains similar events of termination. If the Note Forbearance Agreement terminates, the Majority Note Holders or the trustee could declare the 2009 Notes due and payable and initiate remedies against the collateral.

**8. Commitments and Contingencies**

**Purchase Commitments** The Company has an agreement with Space Systems/Loral, Inc. ( *Loral* ) to design, develop, manufacture, test and deliver ICO G1 and to develop, test and implement a ground-based beam forming system ( *GBBF* ) related to the operation of the satellite. ICO G1 was delivered in February 2008 and was successfully launched on April 14, 2008. Loral has completed the satellite in-orbit testing and space segment in-orbit testing (GBBF working with ICO G1), and on December 23, 2008, the Company accepted the space segment. The Company may be obligated to make future in-orbit performance incentive payments over the design life of ICO G1 under its agreement with Loral. These satellite performance incentives are payable in future periods dependent on the continued satisfactory performance of ICO G1. The Company's space segment, including ICO G1, continues to operate nominally and meets all technical performance requirements defined in the space segment contract with Loral and in the Company's in-orbit insurance policy.

The Company has an agreement with Hughes Network Systems, LLC ( *HNS* ) to provide gateway equipment and services for the Company's MSS/ATC System including the design, manufacture, delivery and test of the radio frequency subsystem, the gateway system controller, the gateway control network and the gateway system interconnections. The Company accepted the completed gateway system on February 20, 2009. The gateway is located at the HNS facility in North Las Vegas, Nevada. The Company retains an option through May 2009 to purchase a diverse site radio frequency terminal along with an associated diverse site facility. The Company also has an agreement with HNS to develop user equipment and a GEO Mobile Radio Interface ( *GMR* ) satellite base station for use in its Alpha Trial.



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The Company has an agreement with Lucent Technologies, Inc. ( Alcatel-Lucent ) to provide certain architecture and technical design services to develop and manufacture equipment for its ICO mim service, including repeaters, satellite headend and gateway core equipment. Alcatel-Lucent is responsible for the delivery, installation and testing of this equipment which is an integral part of the Company s ICO mim service.

The Company has an agreement with Delphi Automotive Systems LLC ( Delphi ) to assist with development of equipment compatible with the Company s ICO mim service that is capable of being manufactured for sale to original equipment manufacturers and aftermarket users as well as to provide the Company with consultation regarding technical issues related to the advancement of its ICO mim service.

The Company has an agreement with Qualcomm Incorporated ( Qualcomm ) whereby Qualcomm will integrate satellite and cellular communication technology in select multi-mode mobile baseband chips and include S-band capabilities in select radio frequency chipsets. This agreement will enable manufacturers of cellular devices to build products that operate in the S-band frequencies where the Company operates, both terrestrially and with the satellite. In connection with this agreement, the Company and SkyTerra Communications Inc. ( SkyTerra, formerly Mobile Satellite Ventures), another MSS provider, have entered into a mutual non-assertion agreement related to relevant aspects of their respective patent portfolios.

As of March 31, 2009, the Company had purchase commitments of approximately \$52.7 million related to the agreements described above as well as other secondary agreements related to the development of its MSS/ATC System and ICO mim service. Approximately \$28.3 million of this amount, the majority of which relates to the achievement of certain construction, delivery and deployment milestones related to the development of the MSS/ATC System and the completion of certain agreed-upon services associated with the Company s ICO mim service, is payable from 2009 to 2011. Additional payments of \$24.4 million, including interest, related to in-orbit satellite performance incentives associated with ICO G1, are payable from 2009 through 2023.

**Satellite System Operating Commitments** The Company has agreements with Intelsat, Ltd. ( Intelsat ) to provide satellite operational services to support the telemetry, tracking and control ( TT&C ) system of ICO G1 and its MEO satellite ( F2 ). Under this agreement, the Company is obligated to pay Intelsat a recurring, monthly fee associated with TT&C and other satellite support services. The Company also has an agreement with HNS to provide operations, maintenance and hosting services for its GEO gateway located in North Las Vegas, Nevada. In addition to these agreements, the Company has commitments for operational services related to its MEO satellite and certain MEO SAN sites.

As of March 31, 2009, the Company had satellite system operating commitments of approximately \$22.5 million related to the agreements described above as well as other secondary agreements related to the operation of its MSS/ATC System and its MEO satellite system.

**Lease and Operating Commitments** The Company has entered into agreements with ten SAN Operators that own and operate substantially all of the Company s MEO SAN sites. Such agreements require the repayment of certain up-front capital asset costs incurred by each SAN Operator in establishing the initial infrastructure for the SAN. The Company continues to have lease commitments under certain of these agreements (see Note 5).

The Company leases office space, a storage facility for its MEO satellites and certain equipment under noncancellable rental agreements accounted for as operating leases. In addition, the Company has lease commitments for the terrestrial network sites that support its Alpha Trial. Total rental expense under operating leases for the three months ended March 31, 2009 and 2008 was approximately \$373,000 and \$348,000, respectively, and is included in general and administrative expenses in the Company s condensed consolidated statements of operations.

**Litigation** In response to the Company s demand for arbitration, in August 2004 Boeing Satellite Systems International, Inc. ( BSSI ) filed an action in the Superior Court of the State of California, in and for the County of Los Angeles, seeking a judicial declaration that the Company had terminated its contractual agreements with BSSI, and thereby extinguished all of the Company s rights and claims against BSSI arising out of or relating to the development, construction and launch of the Company s MEO satellites. In response, the Company filed a cross complaint seeking damages from BSSI for breach of the parties agreements and for other wrongful, tortious conduct. Subsequently, the Company also filed a cross complaint against The Boeing Company ( Boeing ), BSSI s corporate parent, alleging wrongful, tortious conduct that also damaged the Company. BSSI filed a cross complaint against the Company seeking unspecified monetary relief.

On October 21, 2008, the jury awarded the Company at least \$370.6 million in its verdict in the case. The jury awarded the Company \$370.6 million against BSSI, composed of \$279 million for breach of contract and fraud with regard to satellite pricing and \$91.6 million for fraud with regard to launches. The jury also awarded the Company \$91.6 million against Boeing for tortious interference. The jury also rejected all of BSSI s causes of action against the Company.

On October 28, 2008, in view of the jury s finding that BSSI and Boeing acted against the Company with malice, oppression or fraud, the jury heard evidence and argument to determine the amount, if any, of punitive damages to be awarded to the Company. On October 31, 2008, the

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jury awarded the Company \$236 million in punitive damages, consisting of \$59 million against BSSI and \$177 million against Boeing.

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On January 2, 2009, the court presiding over the case entered judgment on the verdict, including pre-judgment interest, in the amount of \$631.1 million. On February 26, 2009, the Court denied most of Boeing/BSSI's post-trial motions and granted one, and the judgment became final in the amount of \$603.2 million. Beginning January 2, 2009, post-judgment interest will accrue on the full judgment amount at the rate of 10% per annum (simple interest), or approximately \$60 million per year. The awards are subject to the risks of appeals and collection. Boeing and BSSI filed their notice of appeal on March 6, 2009, and the Company filed its notice of appeal on March 24, 2009.

Through March 31, 2009, the Company has incurred approximately \$19.1 million in pursuing this litigation and expects it will continue to incur additional costs through the ultimate resolution, which is uncertain.

In June 2008, Sprint Nextel filed an action in the U.S. District Court in the Eastern District of Virginia seeking a court order requiring the Company to reimburse Sprint Nextel for current and estimated future spectrum clearing costs up to \$100 million. The FCC's rules establish the circumstances under which Sprint Nextel may seek reimbursement of clearing costs from MSS entrants such as the Company. On August 29, 2008, the court granted the Company's motion to stay on primary jurisdiction grounds, stayed the case pending further FCC action, and removed the case from the court's active docket. The Company believes the FCC's rules do not require payment under the existing circumstances, which have arisen because of Sprint Nextel's failure to meet its clearing obligation. The Company believes that Sprint Nextel's claims are without merit and intends to vigorously defend itself against Sprint Nextel. The Company currently believes that this lawsuit will not have a material adverse effect on its financial condition, results of operations or cash flows; however, the outcome is uncertain.

In the opinion of management, except for those matters described above and in Note 5, to the extent so described, litigation, contingent liabilities and claims against the Company in the normal course of business are not expected to involve any judgments or settlements that would be material to the Company's financial condition, results of operations or cash flows.

**9. Share-Based Payment**

The Company records stock-based compensation on stock options and restricted stock awards issued to employees, directors and consultants in accordance with SFAS 123(R), which requires measurement of all share-based payment awards based on the estimated fair value on the date of grant, and recognition of compensation cost over the requisite service period for awards expected to vest. The Company estimates its forfeiture rate for stock options and restricted stock awards based on the Company's historical rate of forfeitures due to terminations and expectations for forfeitures in the future. For the three months ended March 31, 2009 and 2008, the Company recognized non-cash stock-based compensation expense of \$1.4 million and \$2.4 million, respectively. Stock-based compensation is included in general and administrative expenses in the Company's condensed consolidated statements of operations.

**Stock Options** The Company has granted stock options to employees, directors and consultants in connection with their service to the Company. For the three months ended March 31, 2009 and 2008, the Company recognized non-cash stock-based compensation expense of \$1.3 million and \$1.8 million, respectively related to its stock options.

The Company did not grant any stock options during the three months ended March 31, 2009. The weighted average fair value of stock options granted during the three months ended March 31, 2008 was estimated using the Black-Scholes Model with the following assumptions:

	<b>Three Months Ended March 31, 2008</b>
Weighted average expected volatility	64%
Weighted average risk-free interest rate	3.5%
Expected dividend yield	0%
Weighted average expected term in years	6.3
Weighted average estimated fair value per option granted	\$ 1.54

The expected volatility is based upon the Company's historical stock price volatility which the Company believes is a reasonable indicator of expected volatility. The risk-free interest rate is based upon U.S. Treasury bond interest rates appropriate for the term of the Company's employee stock options. The expected dividend yield is based on the Company's history and expectation of dividend payments. The expected term has been estimated using the simplified method as described in Staff Accounting Bulletin (SAB) No. 110 which permit entities, under certain circumstances, to continue to use the simplified method in developing estimates of the expected term of plain-vanilla share options beyond December 31, 2007, as was allowed under SAB No. 107.



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The Company's stock option activity for the three months ended March 31, 2009 is summarized as follows:

		Number of options	Weighted average exercise price
Outstanding	December 31, 2008	14,861,073	\$ 4.16
Forfeited		(346,250)	\$ 3.33
Outstanding	March 31, 2009	14,514,823	\$ 4.18
Exercisable	March 31, 2009	7,553,573	\$ 4.81
Vested and expected to vest	March 31, 2009	13,456,219	\$ 4.23

**Restricted Stock Awards** In November 2005, the Company granted 1,600,000 shares of restricted Class A common stock to Eagle River Investments, LLC ( Eagle River Investments ) (which subsequently assigned the shares to Eagle River Satellite Holdings, LLC ( ERSH )) and certain employees and board members. Of these shares, 1,000,000 were granted to Eagle River Investments and treated as a stock dividend. The remaining 600,000 shares had a grant date fair value of \$2.4 million and were charged to expense over the requisite service periods. Restricted stock awards equal to 1,500,000 shares, 50,000 shares and 50,000 shares vested on October 12, 2006, July 14, 2007 and July 14, 2008, respectively.

In October 2007, the Company granted 580,000 shares of restricted Class A common stock to certain employees and consultants. The restricted stock awards contain performance and service conditions to encourage the attainment of key performance targets and retention of employees and consultants. Individual employees and consultants have different amounts of restricted stock awards allocated to the various performance conditions dependent on their responsibilities. The portion of restricted stock awards allocated to a particular performance condition vest 50% when that condition is achieved. After the performance condition is achieved, 25% of shares allocated to that condition vest one year after the performance condition is achieved and the remaining 25% of shares allocated to that condition vest two years after the performance condition is achieved. The total compensation cost associated with these restricted stock awards was \$2.6 million and is being charged to expense over the requisite service periods. Restricted stock awards equal to 84,783 shares, 90,308 shares, 67,995 shares and 46,707 shares vested on May 9, 2008, December 23, 2008, December 31, 2008, and January 15, 2009, respectively, upon satisfaction of the respective performance conditions.

In December 2008, the Company granted 100,000 shares of its restricted Class A common stock to certain employees. These restricted stock awards had a grant date fair value of \$108,000 and were charged to expense over the requisite service period ending January 31, 2009.

For the three months ended March 31, 2009 and 2008, the Company recognized non-cash stock-based compensation expense of \$130,000 and \$586,000 related to its restricted stock awards.

For the three months ended March 31, 2009, the Company did not grant any restricted stock awards. The Company's restricted stock award activity for the three months ended March 31, 2009 is summarized as follows:

		Number of restricted stock awards	Weighted average fair value
Unvested	December 31, 2008	423,976	\$ 3.64
Vested		(146,707)	\$ 2.14
Forfeited		(8,751)	\$ 4.46
Unvested	March 31, 2009	268,518	\$ 4.44

**10. Stockholders Deficiency in Assets**

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The Company entered into a series of securities purchase agreements with a small group of institutional investors which closed in June 2008. Under these agreements, the Company issued and sold 7,574,416 shares of its Class A Common Stock at a price equal to the 20 day moving average of the Company's closing price prior to the dates of the various agreements as quoted on NASDAQ, less a discount of 5%. These stock sales resulted in aggregate gross proceeds to the Company of \$27.5 million.

### **11. Related Parties**

***ERSH, Eagle River Investments and Eagle River, Inc.*** ERSH is the Company's controlling stockholder with an economic interest of approximately 31.7% and a voting interest of approximately 67.3% as of March 31, 2009. This economic interest includes one million shares of the Company's restricted Class A common stock granted to Eagle River Investments as a stock dividend in November 2005. Eagle River Investments subsequently assigned its shares of the Company's stock to its affiliate, ERSH.

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The Company has an agreement with Eagle River, Inc. to provide advisory services to the Company. This agreement has an annual fee of \$500,000 and is payable in quarterly installments in stock or cash, at the Company's option. To date, the Company has elected to make all payments in Class A common stock and has issued 958,032 shares as consideration. As of March 31, 2009 and December 31, 2008, the Company owed Eagle River, Inc. approximately \$42,000 pursuant to the advisory services agreement, which was included in accrued expenses on the Company's condensed consolidated balance sheets.

The Company also had a month-to-month agreement with Eagle River, Inc. to provide office space and administrative support to the Company in Kirkland, Washington, which terminated in November 2008. Total payments made to Eagle River, Inc. under this agreement were \$11,000 for the three months ended March 31, 2008.

**Clearwire Corporation** Eagle River Holdings, LLC (which, like ERSB, is ultimately beneficially owned by Craig McCaw) is a significant stockholder of Clearwire Corporation (Clearwire). The Company has a month-to-month agreement with Clearwire to provide office space for certain of its regulatory personnel in Washington, DC. Total payments made to Clearwire under this agreement for the three months ended March 31, 2009 and 2008 were \$15,000. The Company also has an agreement with Clearwire to explore ways to collaborate on offering Clearwire's broadband Internet offering in conjunction with the Company's ICO mim service, and building out and sharing a terrestrial network (Cooperation Agreement). Pursuant to leases in connection with the Cooperation Agreement, the Company will reimburse Clearwire for utility usage at certain of Clearwire's terrestrial towers and office space in Raleigh Durham as part of the Company's Alpha Trial. Total payments made to Clearwire under this agreement for the three months ended March 31, 2009 were \$7,000.

**Davis Wright Tremaine** An officer of Eagle River, Inc. and Eagle River Investments, who is also a former board member of the Company and the current chairman of ICO North America, is the spouse of a partner at the law firm Davis Wright Tremaine LLP (DWT), which provides the Company with ongoing legal services. Total payments made to DWT under this agreement for the three months ended March 31, 2009 and 2008 were \$70,000 and \$4,000, respectively.

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### **Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations**

The following discussion and analysis should be read in conjunction with our condensed consolidated financial statements and accompanying notes included elsewhere in this quarterly report and the audited consolidated financial statements and notes included in our 2008 10-K.

#### **Special Note Regarding Forward-Looking Statements**

With the exception of historical facts, the statements contained in this management's discussion and analysis are forward-looking statements. All of these forward-looking statements are subject to risks and uncertainties that could cause our actual results to differ materially from those contemplated by the relevant forward-looking statements. Factors that might cause or contribute to such a difference include, but are not limited to, those discussed under Risks and Uncertainties below and elsewhere in this quarterly report. The forward-looking statements included in this document are made only as of the date of this report, and we undertake no obligation to publicly update these forward-looking statements to reflect subsequent events or circumstances.

#### **Overview**

We are a next-generation MSS operator authorized to offer MSS throughout the United States using a GEO satellite. The FCC has authorized MSS operators, upon application and approval, to use MSS spectrum terrestrially to provide integrated satellite and terrestrial services. We are currently developing an advanced next-generation hybrid MSS/ATC System combining both satellite and terrestrial communications capabilities. Our MSS/ATC System will allow us to provide wireless voice, video, data and/or Internet service throughout the United States on mobile and portable devices.

We have met all the FCC milestones necessary to maintain authorization to use our assigned MSS spectrum in the United States. On April 14, 2008, we launched ICO G1 and on May 9, 2008, we certified to the FCC that our MSS system was operational, satisfying our final milestone. On May 30, 2008, we received our 2 GHz license and were granted our spectrum selection in the 2 GHz band, 2100 - 2200 MHz and 2180 - 2190 MHz. Our space segment, including ICO G1, continues to operate nominally and meets all technical performance requirements defined in the space segment contract with Loral and in our in-orbit insurance policy. We are initially using ICO G1 to conduct our Alpha Trial, which began in the fourth quarter of 2008. In January 2009, we received authorization from the FCC to provide commercial ATC service, subject to meeting certain gating criteria.

We are currently in the process of demonstrating the operational status of our MSS system on a trial basis. In order to achieve this objective, we have: (i) signed agreements with vendors to more fully develop technology that would permit video and data multicasting and voice and data interactivity from the satellite, as well as related integrated services for the terrestrial segment; (ii) designed and constructed a terrestrial network, including the leasing of towers; and (iii) installed radio equipment in the terrestrial network. During 2009, we plan to continue these activities; however, to the extent our investments in ARS do not become liquid or we do not secure additional financing as described below, we plan to reduce or delay our spending on these activities. In addition, the commencement of full scale commercial MSS/ATC service operations would require substantial additional capital. We may offer our services to strategic service providers who could incorporate our capabilities to offer integrated satellite and terrestrial services to their customers. Accordingly, we are meeting with potential strategic partners as well as exploring alternative sources of capital.

In October 2008, after a three-month trial, the jury found that BSSI had breached its contract with ICO Operations and engaged in fraud, and that BSSI's parent, Boeing, had tortiously interfered with our contract. The jury further found that in dealing with us, BSSI and Boeing acted with malice, oppression or fraud. The verdicts totaled \$371 million in compensatory damages and \$236 million in punitive damages. On January 2, 2009, judgment was entered in favor of ICO, including \$24 million of pre-judgment interest, in the amount of \$631 million. On February 26, 2009, the Court denied six of the seven Boeing/BSSI post-trial motions and granted one motion regarding pricing fraud, reducing the judgment by approximately \$28 million, or 4%. As a result, the judgment previously entered on the jury's compensatory and punitive damages verdicts against both Boeing and its satellite subsidiary became final in the amount of \$603.2 million. Other than determining the amount of recoverable costs to which we are entitled, these rulings were the last step in the trial court process that began in 2004. Beginning January 2, 2009, post-judgment interest will accrue on the full judgment amount at the rate of 10% per annum (simple interest), or approximately \$60 million per year. The awards are subject to the risks of appeals and collection. Boeing and BSSI filed their notice of appeal on March 6, 2009, and we filed our notice of appeal on March 24, 2009. To the extent the verdict reached in our case becomes subject to appeal, it is unlikely that we will generate any liquidity from this verdict in the next 12 months.

We have International Telecommunication Union (ITU) coordination priority on 25-60 MHz of 2 GHz spectrum on which to operate a MEO satellite system globally in compliance with regulations promulgated by the United Kingdom and the ITU. However, the U.K. Office of Communications (Ofcom) has stated its intent, pending the outcome of any judicial review, to write to the ITU on May 23, 2009 to instruct that the ICO-P assignments currently recorded in the ITU Master Register be cancelled. In addition, in Europe, on June 30, 2008, the European Parliament passed Decision No. 626/2008/EC under which, on August 7, 2008, the EC made a call for applications by October 7, 2008 for

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pan-European systems to provide MSS ( EC Call ). On September 26, 2008, we initiated proceedings in the European Court of First Instance seeking the annulment of Decision No. 626/2008/EC of the European Parliament, contending that the decision is illegal and should be annulled pursuant to Articles 230 and 231 of the Treaty establishing

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the European Community. As these proceedings had not been completed by the October 7, 2008 deadline to submit applications to the EC to provide mobile satellite services, ICO Satellite Limited filed an application with the EC as called for in the above mentioned decision, without prejudice, pending the outcome of the proceedings in the European Court of First Instance. On November 12, 2008 the EC admitted the application of ICO Satellite Limited into the EC Call process.

In addition to these regulatory uncertainties, while we have several MEO satellites in advanced stages of completion and we have successfully launched one MEO satellite, we have curtailed further construction of our MEO satellites due to disagreements with the manufacturer and launch manager of our MEO satellites. Despite the curtailment of construction of our MEO satellite system and the considerable uncertainty as to the cost and economics of restarting the MEO satellite program with our current manufacturer, we continue to explore the potential development of a satellite business plan outside of North America and have signed several contracts to help us further evaluate the usability and augmentation of a MEO satellite system.

We are a development stage enterprise as defined in SFAS 7 and will continue to be so until we commence commercial operations. We are not currently generating revenue from operations and we may be unable to obtain the funding necessary to repay our debt obligations due in 2009, complete the construction of our MSS/ATC System and development of our ICO mim service, fund our future working capital requirements, or achieve positive cash flow from operations. In order to fund the maturity of our short-term debt obligations, we intend to refinance the 2009 Credit Facility and 2009 Notes.

As discussed in Notes 6 and 7 to our financial statements, subsequent to March 31, 2009, ICO North America entered into a series of forbearance agreements in April 2009 and May 2009 with the administrative agent, the holders of the 2009 Credit Facility and the Majority Note Holders, among others, pursuant to which the administrative agent, the holders of the 2009 Credit Facility and the Majority Note Holders have agreed to temporarily forbear from exercising rights and remedies against ICO North America with respect to specified defaults under the 2009 Credit Facility and 2009 Notes. The forbearance agreements require ICO North America to obtain a commitment to fund the repayment of the 2009 Credit Facility or secure the no cost loans as outlined in the UBS ARS settlement agreement by May 15, 2009, in order to extend the forbearance periods through June 5, 2009. We are actively pursuing a refinancing of the 2009 Credit Facility and 2009 Notes in order to fund their maturity. Based on the current credit crisis and volatility in the capital markets, there is no assurance that this refinancing will be completed on terms acceptable to us, if at all. If the forbearance agreements terminate or if the debt is not refinanced, the 2009 Credit Facility and the 2009 Notes could be declared due and payable and remedies could be initiated against the collateral. The outcome of these events cannot be predicted at this time, which raises substantial doubt about our ability to continue as a going concern.

Subject to the successful refinancing of our debt obligations, we intend to fund our remaining working capital needs for the next 12 months with cash on hand, liquidity generated from liquidation of our ARS and settlement activity related to our ARS as discussed below. To the extent the liquidation of our ARS and the ARS settlement activity does not generate sufficient liquidity required by our operating plan, or we do not secure additional funding, we plan to significantly reduce our operating and development expenditures, which would include, among others, capital expenditures for the terrestrial network development of our MSS/ATC System, related personnel and vendor support, and other overhead.

During the first quarter of 2008, we used the proceeds from the sale and maturity of certain of our investments and cash and cash equivalents to purchase student loan backed ARS that have become illiquid due to failed auctions. As of March 31, 2009, we held ARS with a par value of approximately \$74.4 million and fair value of \$59.8 million. On November 14, 2008, we entered into a settlement agreement with UBS whereby UBS agreed to purchase Eligible ARS it sold to us prior to February 13, 2008. Under the terms of the settlement, at our option, we can require UBS to purchase Eligible ARS from us at par value during the period of June 30, 2010 through July 2, 2012. Conversely, UBS has the right, at its discretion, to purchase or sell the Eligible ARS at any time until July 2, 2012, so long as we receive payment at par value upon any sale or disposition. UBS will also provide us with access to loans for a period until June 30, 2010 for an amount up to 75% of the market value of Eligible ARS, subject to certain restrictions in the indenture governing our 2009 Credit Facility and 2009 Notes. As of March 31, 2009, we held Eligible ARS with a par value of approximately \$39.7 million. In April 2009, we sold \$7 million par value of our Eligible ARS for \$4.3 million of cash proceeds and sold \$3.5 million par value of our available-for-sale ARS for \$2.2 million of cash proceeds.

Recent turmoil in the credit markets and the financial services industry may negatively impact our financial condition or liquidity. The credit markets and the financial services industry have been experiencing a period of unprecedented turmoil characterized by the bankruptcy, failure, collapse or sale of various financial institutions and an unprecedented level of intervention from the U.S. federal government. While the ultimate outcome of these events cannot be predicted, such events may have a material adverse effect on our ability to refinance our debt obligations and accordingly, our liquidity and financial condition.

### **Critical Accounting Policies**

Critical accounting policies require difficult, subjective or complex judgments, often as a result of the need to make estimates about the effect of matters that are inherently uncertain. The judgments and uncertainties affecting the application of these policies include significant estimates and

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assumptions made by us using information available at the time the estimates are made. Actual results could differ materially from those estimates. Our critical accounting policies involve judgments associated with our accounting for the fair value of financial instruments, other-than-temporary impairments, contract settlements, share-based payments, income taxes and contingencies. There have been no significant changes to our critical accounting policies disclosed in our 2008 10-K.

### **New Accounting Pronouncements**

In December 2007, the FASB issued SFAS No. 141(R) which requires the acquiring entity in a business combination to recognize all (and only) the assets acquired and liabilities assumed in the transaction; establishes the acquisition-date fair value as the measurement objective for all assets acquired and liabilities assumed; requires transaction costs to be expensed as incurred; and requires the acquirer to disclose to investors and other users all of the information they need to evaluate and understand the nature and financial effect of the business combination. SFAS 141(R) is to be applied prospectively to business combinations for which the acquisition date is on or after January 1, 2009. Early adoption is not permitted. The adoption of this statement did not have a material impact on our financial position, results of operations or cash flows.

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In December 2007, the FASB issued SFAS 160 which establishes accounting and reporting standards for the noncontrolling interest in a subsidiary and for the deconsolidation of a subsidiary. SFAS 160 clarifies that a noncontrolling interest in a subsidiary should be reported as equity in the consolidated financial statements. SFAS 160 is effective for financial statements issued for fiscal years beginning after December 15, 2008. Early adoption is prohibited. The adoption of this statement did not have a material impact on our financial position, results of operations or cash flows.

In March 2008, the FASB issued SFAS 161 which expands the disclosure requirements in SFAS 133 about an entity's derivative instruments and hedging activities. SFAS 161 is effective for financial statements issued for fiscal years and interim periods beginning after November 15, 2008. The adoption of this statement did not have a material impact on our financial position, results of operations, cash flows or disclosures.

In May 2008, the FASB issued FSP APB 14-1 which clarifies that convertible debt instruments that may be settled in cash upon conversion are not addressed by paragraph 12 of APB 14. Additionally, FSP APB 14-1 specifies that issuers of such instruments should separately account for the liability and equity components in a manner that will reflect the entity's nonconvertible debt borrowing rate when interest cost is recognized in subsequent periods. FSP APB 14-1 is effective for financial statements issued for fiscal years beginning after December 15, 2008, and interim periods within those fiscal years. Adoption of this statement did not have a material impact on our financial position, results of operations or cash flows.

In April 2009, the FASB issued FSP FAS 157-4 which provides additional guidance in determining fair values when there is no active market or where the price inputs being used represent distressed sales. It reaffirms what SFAS 157 states is the objective of fair value measurement to reflect how much an asset would be sold for in an orderly transaction (as opposed to a distressed or forced transaction) at the date of the financial statements under current market conditions. FSP FAS 157-4 is effective for interim reporting periods ending after June 15, 2009, with early adoption permitted for periods ending after March 15, 2009. We plan to adopt the provisions of this FSP during the second quarter of 2009 and are currently assessing its impact on our financial position, results of operations and cash flows.

In April 2009, the FASB issued FSP FAS 107-1 and APB 28-1 which requires disclosures of qualitative and quantitative information about fair value for any financial instruments that are not currently reflected on the balance sheet of companies on a quarterly basis. FSP FAS 107-1 and APB 28-1 is effective for interim reporting periods ending after June 15, 2009, with early adoption permitted for periods ending after March 15, 2009. We plan to adopt the provisions of this FSP during the second quarter of 2009 and are currently assessing its impact on our financial statement disclosures.

In April 2009, the FASB issued FSP FAS 115-2 and FAS 124-2 which amends other-than-temporary impairment guidance in U.S. GAAP for debt securities to make the guidance more operational and to improve the presentation and disclosure of other-than-temporary impairments on debt and equity securities in the financial statements. This FSP does not amend existing recognition and measurement guidance related to other-than-temporary impairments of equity securities. We plan to adopt the provisions of this FSP during the second quarter of 2009 and are currently assessing its impact on our financial position, results of operations, cash flows and disclosures.

**Results of Operations**

The following table is provided to facilitate the discussion of our results of operations for the three months ended March 31, 2009 and 2008 (in thousands):

	<b>Three months ended March 31,</b>	
	<b>2009</b>	<b>2008</b>
General and administrative expenses	\$ 17,014	\$ 17,287
Research and development expenses	1,544	1,606
Interest income	(421)	(1,793)
Interest expense	22,323	9,242
Other expense	5,369	3,843
Income tax expense	290	533

*General and Administrative Expenses.* General and administrative expenses are primarily comprised of personnel costs, stock-based compensation, third-party legal and professional fees, satellite storage, satellite system operating expenses and general office related costs.

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General and administrative expenses decreased \$273,000 for the three months ended March 31, 2009 compared to the three months ended March 31, 2008. The decrease is primarily due to a \$4.3 million reduction in costs related to legal matters and other professional fees, a \$1 million reduction in non-cash stock-based compensation expense and a \$507,000 reduction in satellite storage-related costs, partially offset by \$5.7 million of satellite insurance costs in the first quarter of 2009. Since December 31, 2008, as part of our overall efforts to curtail expenditures, we have eliminated seven full-time employee positions.

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*Research and Development Expenses.* Research and development expenses principally consist of third-party engineering, consulting and development costs associated with technology being considered for use in our MSS/ATC System and ICO mim service as well as costs incurred to evaluate the usability and augmentation of a MEO satellite system.

Research and development expenses decreased \$62,000 for the three months ended March 31, 2009 compared to the three months ended March 31, 2008. The decrease is primarily due to a reduction in costs associated with the evaluation of our MEO satellite system, partially offset by an increase in design and development activities related to our MSS/ATC System.

*Interest Income.* Interest income is primarily attributable to interest earned on the investment of the proceeds of our 2009 Notes, 2009 Credit Facility and the series of securities purchase agreements entered into during June 2008.

Interest income decreased \$1.4 million for the three months ended March 31, 2009 compared to the three months ended March 31, 2008. This decrease is primarily due to a reduction in our cash, cash equivalents, and investment balances as we continue to develop our MSS/ATC System and ICO mim service.

*Interest Expense.* Interest expense is comprised of interest incurred and the amortization of debt issuance costs related to our 2009 Credit Facility and 2009 Notes and the amortization of the debt discount allocated to the embedded beneficial conversion feature on our 2009 Notes. These expenses are partially offset by capitalized interest costs associated with the construction of our MSS/ATC System and ICO mim service.

Interest expense increased \$13.1 million for the three months ended March 31, 2009 compared to the three months ended March 31, 2008. This increase is primarily the result of a reduction in capitalized interest costs associated with the construction of our MSS/ATC System and ICO mim service during the first quarter of 2009 as well as interest expense associated with the 2009 Credit Facility.

*Other Expense.* Other expense for the three months ended March 31, 2009 is comprised primarily of net realized and unrealized losses associated with our ARS investments of \$4.3 million and losses on foreign currency transactions of \$1.1 million. Other expense for the three months ended March 31, 2008 is comprised primarily of other-than-temporary losses on available-for-sale investments of \$4.5 million, partially offset by gains on foreign currency transactions of \$498,000.

*Income Tax Expense.* Income tax expense is comprised primarily of interest and penalties related to uncertain tax positions and was nominal for the three and nine months ended March 31, 2009 and 2008.

We are still in the development stage and continue to incur losses. The tax benefit for these losses will not be recognized until realization is more likely than not.

## **Liquidity and Capital Resources**

*Overview.* Substantially all of our capital expenditures and liquidity requirements to date have been related to the development of our MSS/ATC System and ICO mim service. As described in more detail below under Contractual Obligations, our primary expected cash needs for the next 12 months are for the final payments related to the construction of ICO G1, development costs for our ICO mim service, ongoing operating costs and repayment of the 2009 Credit Facility and 2009 Notes.

During the first quarter of 2008, we used the proceeds from the sale and maturity of certain of our investments and cash and cash equivalents to purchase student loan backed ARS that have become illiquid due to failed auctions. As of March 31, 2009, we continue to hold ARS with a par value of approximately \$74.4 million and fair value of \$59.8 million. On November 14, 2008, we entered into a settlement agreement with UBS whereby UBS would purchase Eligible ARS it sold to us prior to February 13, 2008. Under the terms of the settlement, at our option, we can require UBS to purchase Eligible ARS from us at par value during the period of June 30, 2010 through July 2, 2012. Conversely, UBS has the right, at its discretion, to purchase or sell the Eligible ARS at any time until July 2, 2012, so long as we receive payment at par value upon any sale or disposition. UBS will also provide us with access to loans for a period until June 30, 2010 for an amount up to 75% of the market value of Eligible ARS, subject to certain restrictions in the indenture governing our 2009 Notes and 2009 Credit Facility. As of March 31, 2009, we held Eligible ARS with a par value of approximately \$39.7 million. In April 2009, we sold \$7 million par value of Eligible ARS for cash proceeds of \$4.3 million and sold \$3.5 million par value of our available-for-sale ARS for \$2.2 million of cash proceeds.

On March 27, 2008, ICO North America obtained the 2009 Credit Facility which subsequently closed on April 7, 2008. The 2009 Credit Facility matures on May 1, 2009 and bears interest at a rate of 12.5% per year which is payable at maturity. The agreement governing the 2009 Credit Facility requires ICO North America to file year-end financials with an audit opinion that shall not be qualified as to scope or contain any going concern or other qualification or exemption. The opinion from our independent registered public accounting firm on the ICO North America

2008 consolidated financial statements contained an explanatory

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paragraph regarding substantial doubt about ICO North America's ability to continue as a going concern. This resulted in a Going Concern Default under the 2009 Credit Facility.

On April 3, 2009, ICO North America entered into a Forbearance Agreement with the administrative agent and the holders of the 2009 Credit Facility, among others, pursuant to which the administrative agent and the holders of the 2009 Credit Facility have agreed to temporarily forbear from exercising rights and remedies against ICO North America with respect to the Going Concern Default. The Forbearance Agreement was effective until the earlier of May 1, 2009 (the maturity date for the 2009 Credit Facility) or a termination event, as defined under the Forbearance Agreement. In consideration for the Forbearance Agreement, ICO North America paid a fee equal to 0.75% of the existing principal and the default interest rate provided under the 2009 Credit Facility increased to 14.5% during the term of the Forbearance Agreement.

On May 1, 2009, ICO North America entered into a Second Forbearance Agreement with the administrative agent and the holders of the 2009 Credit Facility, among others, pursuant to which the administrative agent and the holders of the 2009 Credit Facility have agreed to temporarily forbear from exercising rights and remedies against ICO North America with respect to the Payment Default and the Going Concern Default. The Second Forbearance Agreement is effective until the earlier of May 15, 2009 or a termination event, as defined under the Second Forbearance Agreement. The Second Forbearance Agreement can be extended for an additional three week period in certain circumstances if ICO North America is able to obtain a commitment to fund the repayment of the 2009 Credit Facility or is able to secure the no cost loans as outlined in the UBS settlement agreement. ICO North America must meet a number of conditions for the continued effectiveness of the Second Forbearance Agreement. In consideration for the Second Forbearance Agreement, ICO North America is paying a fee equal to 1.25% of the existing principal and interest will be paid during the term of the Second Forbearance Agreement at a rate of 16.0%. In the event there is a partial repayment of the 2009 Credit Facility, the fee will be refunded.

Also on May 1, 2009, ICO North America entered into a Note Forbearance Agreement with the Majority Note Holders and the trustee, among others, pursuant to which the Majority Note Holders have agreed to, and to direct the trustee to, temporarily forbear from exercising rights and remedies against ICO North America with respect to the Payment Default. The Note Forbearance Agreement contains a term and conditions similar to the Second Forbearance Agreement, as well as additional terms, but does not require payment. In addition, the Second Forbearance Agreement and the Notes Forbearance Agreement contain similar events of termination.

If the forbearance agreements terminate or if the debt is not refinanced, a majority of the holders of the 2009 Credit Facility or the administrative agent could declare the 2009 Credit Facility due and payable and initiate remedies against the collateral, and the Majority Note Holders or the trustee could declare the 2009 Notes due and payable and initiate remedies against the collateral.

As of March 31, 2009, we had a working capital deficit (current liabilities exceeded current assets) of \$822 million. This deficit is primarily due to our 2009 Notes and 2009 Credit Facility coming due within one year and the majority of our investments in ARS being recorded as long-term available-for-sale and trading investments as it is unlikely we will liquidate these investments within one year. We are actively pursuing a refinancing of the 2009 Credit Facility and 2009 Notes in order to fund their maturity. Based on the current credit crisis and volatility in the capital markets, there can be no assurance that this refinancing will be completed on terms acceptable to us, if at all. The outcome of these events cannot be predicted at this time, which raises substantial doubt about our ability to continue as a going concern.

Subject to the successful refinancing of our debt obligations, we intend to fund our remaining working capital needs for the next 12 months with cash on hand, liquidity generated from liquidation of our ARS and settlement activity related to our ARS. To the extent the liquidation of our ARS and the ARS settlement activity does not generate sufficient liquidity required by our operating plan, or we do not secure additional funding, we plan to significantly reduce our operating and development expenditures, which would include, among others, capital expenditures for the terrestrial network development of our MSS/ATC System, related personnel and vendor support, and other overhead.

If we were to develop the incremental ATC portion of our MSS/ATC System and our ICO mim service, we would require substantial additional capital. We would likely seek this additional financing through offerings of equity or debt securities or funding agreements with strategic partners. The category of business or consumer market we choose to serve, the type and extent of ATC infrastructure necessary to serve such market and the geographic scope of our service area will affect the amount of capital needed for the terrestrial ATC portion of our MSS/ATC System. We expect that the additional funding needed for the type and scope of commercial service we would pursue without strategic partners would range from approximately \$300 million to \$800 million, depending on the business or consumer market we choose to serve, the type and extent of infrastructure necessary to serve such market and the geographic scope of our service area. It is possible that we will not be able to obtain this additional financing on acceptable terms, if at all. If we elect to commence commercial ATC service, within one year after doing so, the FCC's rules require us to maintain a spare satellite on the ground, which is estimated to cost between \$200 million and \$250 million. The spare satellite is not a requirement for the provision of MSS only services.



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*Cash Flows.* The following table is provided to facilitate the discussion of our liquidity and capital resources for the three months ended March 31, 2009 and 2008 (in thousands):

	<b>Three months ended March 31,</b>	
	<b>2009</b>	<b>2008</b>
Net cash provided by (used in):		
Operating activities	\$ (8,011)	\$ (16,278)
Investing activities	2,008	(112,708)
Financing activities	(91)	
Effect of foreign exchange rate changes on cash	(50)	301
Net decrease in cash and cash equivalents	(6,144)	(128,685)
Cash and cash equivalents beginning of period	29,261	&n