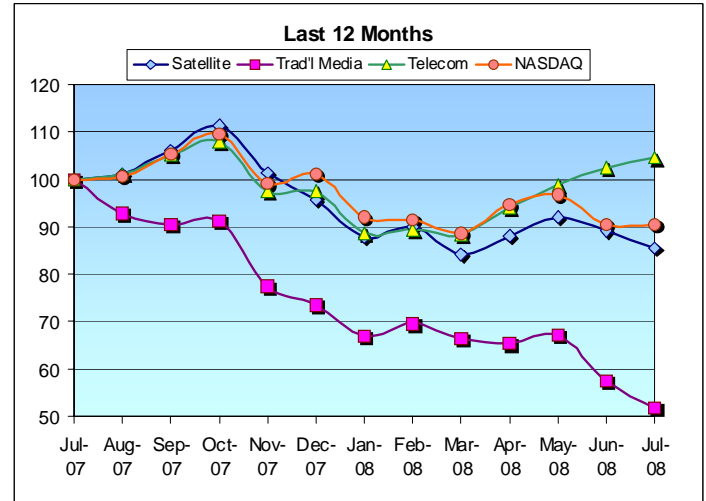


# FROM THE GROUND UP

**July 2008**
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**THE WAY WE SEE IT...**
**Satellite:**

**DIRECTV** took on-orbit delivery of DIRECTV-11, maintaining its lead in HD programming (150 channels) over **DISH**, which hit its target of 100 HD channels well ahead of plan but suffered the loss of Echostar-2 this month. **DISH** may actually lose subscribers this quarter for the first time since the beginning of **DBS**, but don't count **DISH** out yet as it has also just placed Echostar XI into orbit and is refocused on service quality. **Harbinger** announced the contemplated merger of two of its holdings, **Inmarsat** and **Skyterra (MSV)**, a difficult regulatory proposition, but a very strategic transaction for both sides (see *Current Spot Beam* article in this month's newsletter).

**Media:**

Two long awaited deals have either closed or made it past the point of no return to doing so. First, the merger of **XM Satellite Radio** and **Sirius Satellite Radio** was in the past week approved by the FCC (see related column in this month's *Current Spot Beam* article), and on July 29 the combination was consummated with the birth of **SIRIUS XM Radio Inc.** (NASDAQ: "SIRI"). Equally noteworthy, **Clear Channel Communications** announced last week that its shareholders had approved the company's going-private transaction, with a deal closing expected to occur on the day of this newsletter release. Since the original announcements of both transaction agreements, more or less two years ago, much has changed in the radio sector (let alone the financial markets), and we will monitor both cases to see if and how the long sagas were worth the wait. Speaking of finished sagas, another that will merit close monitoring is that involving **Yahoo!**, **Microsoft**, and **Carl Icahn**, (see related *Deal Side* column herein). With Mr. Icahn and two other directors of his choosing set to join Yahoo's board, Yahoo's business and transactional strategy in months to come could be worth studying for indications of broader Internet trends and repercussions.

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### Interpreting Icahn and Yahoo! Inc.

... the resolution may contain an interesting symbolic aspect:

the meeting of old and new, East and West, and the bridging of divides between Silicon Valley and New York...

In the most current stage of the long and maybe still evolving saga at Yahoo!, the company and dissident shareholder Carl Icahn have reached a settlement in which the latter and two of his alternative slate of directors will join Yahoo's board. While this is newsworthy for a multitude of reasons, not least of which in its presumed relapse of a corporate battle that had been raging and escalating, the resolution may also contain a much broader and more interesting symbolic aspect: the meeting of old and new, East and West, and the bridging of divides between Silicon Valley and New York. If West Coast media has been characterized by the Internet's multitude of new media platforms, personified in the likes of Yahoo!, Google, Amazon, Microsoft, Facebook, and now Twitter, the East Coast has traditionally been the home of older media powerhouses... Viacom, Time Warner, NewsCorp, and "Madison Avenue." And while we often hear about the necessary transition of old media to new digital and interactive forms, the time may also have come for new media to, as it were, grow up. We see increasing evidence of such stirrings, and Mr. Icahn (an East Coast grown-up, to be sure) joining the board of a West Coast Internet company with an exclamation mark in its name, may not be as much a mixture of oil and water as natural evolution. Below are a few notable events and observations from the digital media sector, reflecting what may be viewed as symbolic facets of the Icahn/Yahoo! marriage: institutional discipline, profit orientation, strategic value creation/extraction, and management maturation.

... a few notable events and observations from the digital media sector, reflecting what may be viewed as symbolic facets of the Icahn/Yahoo! marriage...

- Institutional discipline: Many participants of the blogosphere have noticed and bemoaned the recent acquisitions and institutional financings taking place in their world. Examples include Silicon Alley Insider, BlogHer, and JuliB in the past few weeks, in addition to The Huffington Post and Giga Omni Media since the latter half of 2007. The purists of this community, having enjoyed the offerings of freelance (not to say casual) scribes, are loudly lamenting what is believed to be an irreversible trend that will change the nature of blogged content to more tightly buttoned professional reporting. Perhaps there is an element of validity in this concern, as the genuineness and freedom of the traditional blog could certainly be damaged by an editorial staff. That said, if the Internet is coming of age (as some believe, see paragraph below), and if blogs indeed serve an important information distribution function (as many have argued), then, much as some would like to think otherwise, blogs are destined to be a real business. As such, branded hubs of quality content are sure to be more efficient at attracting advertising dollars than an individual post... and, maybe revenue is not such a bad thing for writers.

## ***From the Deal Side (cont.)***

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... institutional discipline, profit orientation, strategic value creation/extraction, and management maturation...

• Profit orientation: Speaking of revenues and blogs, a favorite writer among the digital media community, Fred Wilson of Union Square Ventures, together with his partner Brad Burnham, have increasingly made mention of the turning corner in the web space. While Union Square has been known for interesting (albeit revenue-free) discoveries and investments in the likes of Twitter and Tumblr, here is a quote from a recent Wilson blog: “As investors like us start thinking about how to allocate capital to a global internet, it would be very useful to focus on revenue/user instead of just global audience.” Pretty clear and no beating around the bush, and from Fred’s partner Brad in a separate post: “Though it is not often stated, I think insiders feel the web is coming of age, and they are wondering what’s next.” What’s next may be illustrated in the following Silicon Alley Insider headline on July 27: *Bad News For MySpace: Growth Curve Flattened. Good News For MySpace: It’s A Real Business*. The report underscores that “MySpace and the rest of Murdoch’s Web properties are now... making real money. That’s worth remembering as we enter the late stages of the Web 2.0 boom.”

• Strategic value creation/extraction: We have seen some notable small-scale strategic M&A in the digital media sector lately, which is to say, M&A activity that does not constitute the typical VC-exit scenario with the usual West Coast suspects, but rather strategic acquisitions by VC-backed smaller platforms. For example, Twitter’s strategic acquisition of Summize (contextual search technology), and Zynga’s announced acquisition of YoVille (digital gaming), are indicative of up-and-coming but single-dimensional enterprise seeking to round out asset value and competitive profile by filling in potential strategic holes or branching out into new terrain, rather than merely adding more users. One has been accustomed to such strategic acquisitions in more mature businesses – indeed, Microsoft’s run at Yahoo! and Carl Icahn’s views regarding the latter’s strategic options are a good case and point – but more rarely, until now, as part of a relative start-up’s value creation exercise.

... if the traditional school of thought had put the onus on old media to [move] in the direction of digital/interactive technology, there may be a new school emerging, which seems now to push the newer media to evolve...

• Management maturation: Among Carl Icahn’s many proposals for Yahoo! was the replacement of key management and board members with individuals he felt to be more qualified for a company facing Yahoo’s growing challenges. While the validity of this idea is debatable, there is on a lesser scale some of the same going on at the lower end of the sector. The same Zynga mentioned above, for example, brought in a 26-year gaming industry veteran – who according to some commentators has been around the sector longer than existing Zynga staffers have been alive – to help run the company on the heels of a new investment by Kleiner Perkins. More widely publicized have been the senior-level additions and reshufflings at Facebook, reflecting that company’s rapid conversion

## ***From the Deal Side (cont.)***

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from youth-targeted novelty to a formidable presence facing the issues of establishment.

...we here in New York – accustomed to the company of large entertainment empires, publishing houses, and advertising conglomerates – look forward to increasing interaction with the West...

And so in summary, while the traditional school of thought (if “tradition” can be applied to a sector that is younger than most of its participants) had put the onus on old media to not so much inch as move by leaps and bounds in the direction of digital/interactive technology, there may be a new school emerging, which seems now to push the newer media to evolve. To generate profit, let alone revenue, is no longer an afterthought but an area of focus. To manage professionally, rather than by intuition, is increasingly desired. To create advertising and/or subscription models that can be packaged and sold, is an old media staple that is now getting attention on the web. And as the IPO market seems at least for now to have become a less facile exit alternative for venture capital, there are signs of VC-backed platforms beginning to focus on value creation through strategic planning rather than merely growth. If all these aspects of more traditional enterprise are indeed taking shape in new media, as we believe to be the case, and if the joining of Carl Icahn and Yahoo! symbolize a mutual approach and union of previously distant worlds, we here in New York – accustomed as we have been to the company of large entertainment empires, publishing houses, and advertising conglomerates – look forward to increasing interaction with the West. In passing, we mention that Google last month expanded its New York office space by another 50,000 square feet and now employs 1,600 people in the area. Silicon Alley may not be in the shadow of its more animated sibling much longer.

By Dan Ramsden  
Near Earth LLC

# ***The Current Spot Beam I***

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## **FINALLY, the FCC approves the XM / Sirius merger!!!!**

Back on February 19, 2007, the Boards of XM Radio and Sirius Satellite Radio approved a plan of merger and began what would become a long, combative and historic regulatory drama. On March 29, 2007, they submitted an application with the FCC to combine their spectrum into a new merged entity. On June 8, 2007 (the FCC's Day 0), the pleading cycle was officially established. This last Friday, July 25, 2008 (FCC Day 412) the approval was finally granted. XM shareholders will receive 4.6 shares of Sirius stock in the merger. The new company will be named Sirius XM and will trade under the ticker "SIRI".

... The approval undoes a well intentioned FCC created duopoly that seemed to make sense last century...

The approval undoes a well intentioned FCC created duopoly that seemed to make sense last century. After all, the FCC had watched an initial five or six satellite TV competitors bludgeon each other down to a sustainable two survivors, DIRECTV and Echostar. Perhaps consumer space businesses were just too hard to expect more than a couple players to survive. When it came to satellite radio it turned out that even two was a big number and, unlike satellite TV in rural America, there is already ample evidence of serious alternative competition in the radio market. Last Friday, this reality was finally acknowledged. The FCC's approval will now allow for the formation of a stronger combined satellite radio competitor with 18.5 million subscribers, comparable in scale to DIRECTV's 17 million subscribers.

... When it came to satellite radio it turned out that even two was a big number and, unlike satellite TV in rural America, there is already ample evidence of serious alternative competition in the radio market...

The approval is rumored to have come with several material concessions and conditions, including:

- Payment of \$19 million in fines for terrestrial repeaters operating out of compliance, of which approximately 100 of XM's and 11 of Sirius' will be shut down or brought into compliance;
- A 3 year freeze on subscription fees with a relook feature six months before the freeze expires allowing for public comment and a potential continuation of the price freeze;
- The addition of smaller lower cost programming packages in a more a la carte service offering;
- A one year deadline to establish a dual mode radio and the establishment of an open standard for manufacturing; and
- A spectrum set aside of roughly 8% amounting to 24 channels to be allocated for 12 public service channels and 12 minority programming channels.

## ***The Current Spot Beam I (cont.)***

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Satellite radio does not merely compete with itself... [and] can not through a merger become a monopoly in any economic sense of the word...

These conditions while material do not seem unreasonable and should not prevent a vigorous and intelligent management team from making a go of the new combined venture. Looking at the final result, our hats go off to the three brave FCC commissioners who were able to set aside the self interested lobbying of the powerful NAB to make this long overdue common sense decision. These three commissioners got it. Satellite radio does not merely compete with itself. It can not through a merger become a monopoly in any economic sense of the word. It will continue to compete with the legacy AM/FM services trying mightily to convert free-to-air listeners into paid subscribers. Perhaps, more importantly, it faces an ever growing and powerful array of digital, wireless, iPod/MP3 and internet music and audio distribution alternatives that threaten to capture much of those premium, technology sophisticated, young and audiophile sectors of the market more likely to pay subscriptions. Many of these newer alternatives provide 1000's of channels of content, offer significant individual customization of channels and come with special features allowing listeners to skip, ban or even "love" songs to teach their service how to better serve them in the future.

For satellite radio to compete effectively and better serve consumers, it first needed a saner cost structure, improved access to capital and greater channel capacity. The approved merger offers a chance at all of these, but not a guarantee that the new entity will achieve the level of sustained profitability that has eluded these companies since their creation over a decade ago. So far, the market's response has been underwhelming. Clearly investors think the FCC approval is just one step in what will still be a challenging business plan execution for the merged entity. Here are a few comments taken at random from the financial blogs:

"Awesome, the merger is finally approved and the stock is still going down."

The market understands this fact...

"Is anyone else watching this stock today in disbelief, thinking how can these stocks still go down after FCC approval."

"I do not understand why this is going down, it makes no sense, it should at least go back to the stock price of when the deal was announced."

Surprising that a "monopoly" should be treated thus, but of course it is not a monopoly and will face many competitors and many obstacles to success. The market understands this fact. Thankfully, however, through the wisdom and courage of three FCC commissioners, consumers may one day soon experience a more vibrant and competitive satellite radio alternative, one that can better realize the full potential of this still emerging technology. Chairman Kevin Martin said it best, "The merger is in the public interest and will provide consumers with greater flexibility and choices. Consumers will enjoy a variety of programming at reduced prices

## ***The Current Spot Beam I (cont.)***

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and more diversified programming choices. It will also spur innovation and advance the development and use of interoperable radios, bringing more flexible programming options to all subscribers."

Alas, the NAB (and Internet radio) will now have one strengthened competitor versus two weaker ones. We believe this will spur more innovation and provide consumers with more and better options, but it may also help accelerate the slow secular decline of AM/FM listenership. In the final analysis, however, it is not the purpose of the FCC or any part of our government to protect old technologies from new ones. No technology is guaranteed an audience forever. If AM/FM wants to fight back it has only to ditch its analog roots, join the digital revolution and switch more aggressively to HD technology.

Lastly, there are also the natural cogitations, murmurs and predictions as to what this approval might mean for a future combination of DIRECTV and DISH. By all we can tell, the consensus is that such a merger is still years away from making a similar case for alternative competition in its core markets. But, if Telcos increase their video efforts, IPTV continues to proliferate and mobile video finds a workable business model, we may face a new regulatory drama for satellite TV in the not too distant future. That one should make this one seem like child's play.

In the final analysis, it is not the purpose of the FCC or any part of our government to protect old technologies from new ones... No technology is guaranteed an audience forever.

By Hoyt Davidson  
Near Earth LLC

## Harbinger and Skyterra plan to bid for Inmarsat – the other shoe drops

...announcement that Inmarsat and Skyterra (MSV) are indeed going to make it official, provided the regulators will bless the union...

At the risk of seeming boastful, we saw this one coming. Following the companies' spectrum swapping deal from late last year (see "Mobile Satellite Ventures and Inmarsat Play Nice" in the January 2008 issue of *From the Ground Up*), Inmarsat and Skyterra (or, more correctly, their MSV subsidiary) have been joined at the hip (through spectrum sharing and cross ownership), so why not try to make it official? And thus Voila! We get the latest announcement that indeed they *are* going to make it official, provided the regulators will bless the union.

At first blush, this combination makes a lot of sense. Inmarsat is the grand daddy of Mobile Satellite Services – having been in service for decades with hundreds of thousands of terminals in service worldwide. MSV, descended from its forebear American Mobile Satellite Ventures is the second oldest MSS firm. Inmarsat arguably has the most powerful brand in the sector, a worldwide L-band spectrum footprint (with a notable deficiency in North America) and the oh so elusive (at least for MSS) EBITDA. MSV, while a bit light on revenues and EBITDA, has beaucoup L-band spectrum in the U.S. and Canada, right where Inmarsat needs it – along with a ton (actually, several) of satellite hardware on order and a formidable array of Intellectual Property to use it.

Then there's the common ownership factor: Harbinger. When they weren't getting rich betting against subprime and rattling cages at The New York Times, Phil Falcone and his gang quietly put their fingerprints all over the MSS sector, amassing the following stakes:

- 30% of TerreStar Networks
- 50% of Skyterra (MSV's parent)
- 28% of Inmarsat LTD

Part of the rationale for this bullishness could be the seemingly inexorable rise in spectrum values of late.

Most recently, the folks at Harbinger also committed to fund Skyterra (and thus, MSV) with \$500 million in fresh debt capital, independent of the proposed Inmarsat/Skyterra merger. Clearly, these guys are bullish on the sector in general, and endorse the potential value creation from a merger.

Part of the rationale for this bullishness could be the seemingly inexorable rise in spectrum values of late. Consider that recently Nextwave wireless sold a substantial portion of their AWS spectrum holdings for \$150 million – or twice the \$75 million they purchased in for in the FCC auction, just two years ago. Or, note the results from the recent Canadian AWS auction, where 105 MHz of 2 GHz spectrum garnered an impressive C\$4.3 billion – over C\$1.35 per MHz-POP or four times the pre auction prediction!

## ***The Current Spot Beam II (cont.)***

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... a merger that has elements of operational consolidation as well as a larger spectrum hoarding...

We think that this transaction thus represents a merger that has elements of an operational consolidation as well as being part of a larger spectrum hoarding strategy that Harbinger (and Apollo advisors, through their own substantial sector holdings) are undertaking. With the substantial appreciation seen for spectrum in recent periods and operational synergies to protect the downside, and the potential for substantial pricing power from controlling a truly massive swath of spectrum to offer upside, this seems an interesting strategy indeed. And perhaps, presages additional consolidation in the MSS sector, yet to come.

By John Stone  
Near Earth LLC

## M&A Deal Term Trends for 2008/2009

Understanding prevailing market conditions for middle market transactions in the United States is crucial in negotiating the best deal for buyers and sellers, and fair and equitable deals. There are always natural tensions between buyers and sellers. In today's market -- with diminished liquidity and, therefore, fewer prospective buyers -- those tensions have heightened, with the pendulum swinging toward the buyers who are sitting on cash and have access to debt financing. These are relative -- not raw -- matters, and sellers still enjoy a foothold in negotiating some matters, but in general, the eligible buyers have gained a bit of an upper hand.

I loosely define the middle market as deals of between \$10 million and \$1 billion, with most deals valued at \$200 million and below.

Beyond diminished liquidity, sellers are legitimately concerned about an economic recession and threats of inflation. Furthermore, the upcoming presidential election may result in less favorable tax treatment of mergers and acquisitions by corporations and individuals.

Meanwhile, prospective buyers -- private equity or hedge funds, international buyers, special purpose acquisition corporations (SPACS), or private or public companies -- face similar market uncertainties and a double-edged sword. An economic downturn makes it harder for them to raise capital. At the same time, however, it allows them to capitalize on sellers' motivations to expedite sales, giving them leverage to re-negotiate purchase prices and lower the expectations of sellers in terms of reduced PE multiples.

Because deal terms ultimately reflect the ability and willingness of buyers and sellers to accept certain risks, deal terms in today's economic climate need to be more creative and flexible. In my practice, where I represent buyers and sellers in acquisitions, I routinely encounter and consider the key issues that drive the middle market, and offer them here, along with some thoughts on how to confront them.

### All Cash vs. Earn-Outs

Most economic downturns and valuation adjustments are accompanied by revived interest in bridging valuation gaps through seller financing and earn-outs.

In the coming year, cash will still be king when making an offer. Many buyers will seek to look at deals where they can pay a reasonable EBITDA multiple and pay half of the purchase price in cash and the other half from

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debt. If and when the liquidity crunch loosens, such Buyers will be in position to re-finance the business and reap strong returns.

Alternatively, buyers' and sellers' lawyers and investment bankers may seek to have sellers accept a portion of the purchase price in the form of earn-outs, in an attempt to combat sellers' expectations of higher multiples. A carefully drafted earn-out provision can afford a seller the opportunity to receive the highest price if the company performs to agreed-upon financial criteria. This forces sellers to maintain a vested interest in the success of the business being sold. Earn-outs should also protect buyers from assuming the risks associated with buying a business in uncertain economic and political times.

The ultimate tool for bridging seller-buyer valuation gaps is the "earn-out"...

The ultimate tool for bridging seller-buyer valuation gaps is the "earn-out," where a portion of the purchase price is calculated based on the company's post-closing performance. Transactions involving seller financing and equity rollovers are more document-intensive, but may increasingly become the only way to get some deals done.

Earn-outs are among the most detailed to negotiate and draft because they must address relevant performance standards, add-on acquisitions, overhead allocations and other issues. Parties should make certain that earn-out provisions are detailed enough to avoid disputes over whether relevant benchmarks have been reached. Parties should also agree on accounting standards that may affect seller's realization of certain thresholds.

The credit crunch will increase the frequency of earn-outs, because they will ease the burden on buyers to accumulate capital necessary to finance deals at their outset.

While the frequency of earn-outs has fallen in recent years, they may make a noticeable comeback because they allow buyers to force sellers to ensure that their valuations are accurate. The current credit crunch will also increase the frequency of earn-outs because they will ease the burden on buyers to accumulate capital necessary to finance deals at their outset.

### **More Detailed Letters of Intent**

In the first half of 2008, pending litigation surrounding several high profile deals have demonstrated the importance of carefully drafted letters of intent. I believe that more detailed letters of intent will result in a higher percentage of completed transactions. A properly detailed letter of intent should discuss issues including how the deal will be structured (in terms of both legal and tax issues), price and terms of consideration, the terms of representations, warranties and indemnities, baskets, included and excluded assets and liabilities, working capital adjustments, due diligence provisions, and conditions to close. (For a more detailed discussion of issues to be covered in letters of intent, please see Herrick Feinstein LLP's website for this author's article entitled "**Ins and Outs of Private**

**Equity Letters of Intent**", which was also contributed to the February issue of this newsletter).

With times of greater economic uncertainty, buyers will need to make sure that their investors are getting the deal as promised. Sellers will seek to shorten the due diligence period, and therefore buyers (especially the private equity and hedge funds) are going to seek longer due diligence time frames. Both buyers and sellers will benefit from stating a time frame for completion of due diligence and notification of any deal-breaker issues.

Because the MAC clause allows a buyer to back out... it is often the most heavily negotiated section in transactions.

### **Material Adverse Change and Material Adverse Effect Clauses**

Material adverse change ("MAC") or material adverse effect ("MAE") means, when used in connection with a target, any change, event, violation, inaccuracy, circumstance or effect that is materially adverse to business, assets, liabilities, financial condition results of operations or prospects of a target and its subsidiaries. Because the MAC clause allows a buyer to back out if a MAC occurs and harms the seller's company or its assets, it is often the most heavily negotiated section in transactions. Case law implies that MAC clauses that are either too broad or too narrow can have unintended consequences, and parties should be discerning regarding what is included in a MAC clause.

Sellers will want to try to limit the MAC clause's impact as much as is reasonably possible. To accomplish this, Sellers should negotiate the exclusion of specified events, e.g., failure to obtain governmental approvals, regulatory changes, economic effects, terrorist attacks, or GAAP changes. Sellers should also restrict buyers' remedies, allowing them only a predetermined reduction in price rather than the ability to back out of the deal entirely.

Buyers are seeking to get out of deals that contain MAC clauses such as downturns in the financial markets, general economic or industry downturns...

From a buyer's perspective, a MAC clause should contain forward-looking language particularly when speaking of events reasonably likely to materially decrease short-term earnings. Buyers should be consistently precise in their drafting because specifying certain events could cause a court to disregard more general language upon which a buyer might later seek to rely if it tries to cancel the deal after an unspecified event occurs.

Buyers are seeking to get out of deals that contain MAC clauses such as downturns in the financial markets, general economic or industry downturns, war/terrorism, changes of law/accounting principles or announcement of the deal.

The litigation surrounding high-profile transactions should produce the first judicial interpretations of concepts such as MACs and "reasonable best

efforts”, as well as the enforceability of termination fees and specific enforcement clauses.

### **Purchase Price Adjustments/Escrows**

Buyers will seek protection from an economic downturn and the risks associated with reduced profitability by seeking post-contract signing purchase price adjustments. These price adjustments will seek to capture changes in value that occur between the negotiation stage and closing. Because transactions are typically structured, negotiated, and finalized well before closing date financial statements are available, parties often use previously issued financial statements as a basis for the transaction. The post-closing purchase price adjustment will reflect any changes from the referenced financial statements. Buyers will safeguard against the uncertain economy by relying on post-closing purchase price adjustments rather than committing to a higher stated purchase price.

Buyers will seek a larger portion of the purchase price to be held in escrow. Generally, the term of the escrow can run from 12 to 18 months. Longer escrow periods help guarantee that buyers are paying a fair price by postponing the date for the post-closing adjustment of the purchase price.

On the other end of the deal, sellers need to ensure the terms of the purchase price adjustment, the escrow release, and any related dispute resolution provisions are clear. Parties often disagree on the amount of the purchase price adjustments because the provision in the agreement is unclear. Therefore, buyers and sellers should be sure that the agreement specifies whether the purchase price adjustment is governed by changes in net assets, net worth, stockholder’s equity, retained earnings, working capital, inventories, sales volumes, or some combination thereof.

### **Indemnification Issues**

Indemnification provisions seek to balance the buyers’ desires to keep sellers on the hook for breaches, on the one hand, against the sellers’ wishes to eliminate any continued responsibility for the business. Survival periods for sellers’ representations and warranties have steadily declined from 24 months -- prevalent when liquidity was great and buyers were around every corner -- to 18 months or as little as one audit cycle after closing. Because of relative illiquidity and a shrinking pool of buyers, the market standard may swing back to 24 months or more, at least for certain types of liabilities, including those related to intellectual property.

Losses eligible for indemnification may increasingly include those relating to diminution in value, as opposed to actual damages or third-party claims.

Buyers will [also] seek protection from an economic downturn and the risks associated with reduced profitability by seeking post-contract signing purchase price adjustments.

Because of relative illiquidity and a shrinking pool of buyers, the market standard [for indemnification] may swing back to 24 months or more...

Conservatism among buyers may also result in smaller indemnification baskets, increased indemnification caps and escrows, and fewer carve-outs from each. It is unclear how much, if anything, buyers will have to pay as a premium to get these changes.

Conservatism among buyers may also result in smaller indemnification baskets, increased indemnification caps and escrows, and fewer carve-outs from each.

Buyers are seeking to limit the ability of sellers ability to qualify or hedge their representations, and many battles undoubtedly will be fought over the limitations sellers traditionally seek to place on their representations, including “materiality,” “to the best of knowledge,” “on a consistent basis,” and others. We are seeing buyers attempting to carve out completely the materiality provisions of representations and warranties -- a likely hot-button issue in any purchase agreement.

### **Longer No-Shops, Reverse Due Diligence**

Everyone expects private equity funds to increase due diligence, so auction processes and no-shop provisions will often be longer. To avoid an unnecessarily lengthy transaction process, which can create uncertainty and depress transaction prices, savvy sellers will plan ahead and instruct their accountants and lawyers to conduct reverse due diligence. They will also amend management and third-party assignment or control provisions in an effort to head off surprises and delays. Sellers will need to be careful not to have their companies taken off the market too long without some sort of economic protections.

### **Seller Paper, Employment Arrangements**

Should the unavailability of credit continue to roil the middle market, buyers may increasingly ask sellers to accept promissory notes for part of the purchase price -- especially to bridge valuation gaps or to overcome due diligence concerns by using note setoffs as an escrow alternative.

... expect sellers to be more cautious about “financing outs” ...

Sellers also may be convinced to leave more equity in the deal to reduce the buyers’ needs for debt or equity financing. Sellers may have to agree to take part of their payment for their equity as compensation under an employment agreement, frequently with time- and performance-based vesting provisions. This allows the target to pay the money over time and take a deduction for tax purposes.

### **Financing Contingencies, Termination Fees, Sponsor Guarantees**

I expect sellers to be more cautious about “financing outs.” In contrast to larger public deals, however, we have not seen “reverse” termination fees, sponsors’ guarantees, or penalties for buyers’ failure to obtain financing in the middle market and below.

### Conclusions

Competing pro-buyer and pro-seller forces make it difficult to predict the precise dynamics and terms for smaller and middle market transactions. Competition among buyers will definitely increase, allowing sellers to exercise more leverage regarding deal terms. Valuation multiples may decline or normalize. In any event, arguments about what terms are “market” may become less effective as a negotiating strategy.

In these particularly tumultuous economic times, buyers, sellers, their accountants and attorneys will be called on to structure transactions -- and the terms of them -- creatively. The ability and willingness to do so will create opportunity for middle market participants -- buyers and sellers -- to close beneficial deals. The flip side is that rigidity and insistence on terms better suited to calmer and more liquid environments will tend to stall deals that otherwise would benefit the principals.

This article is only a general outline of deal trends and you should consult with an attorney and your financial advisor(s) before negotiating and finalizing any M&A transaction.

***Please email the author, Ted D. Rosen, Esq. at: [trosen@herrick.com](mailto:trosen@herrick.com) with any questions about this article or call: (212) 592-1593. Please visit: [www.herrick.com](http://www.herrick.com) to learn more about the Corporate Practice Group of Herrick, Feinstein LLP. Special thanks to Jacquelyne D. Garfield (Cardozo Law School) for her assistance with the preparation of this article.***

In these particularly tumultuous economic times, buyers, sellers, their accountants and attorneys will be called on to structure transactions creatively... [and] what terms are “market” may become less effective as a negotiating strategy...

By Ted D. Rosen, Esq.  
Herrick, Feinstein, LLP

# Conference Round-Up

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## NewSpace 2008

A movement known as NewSpace believes that commercial activity is about to take its place next to government in areas of human space transportation, logistics and planetary exploration, and perhaps profitably so.

The extent to which satellite activities have become a self-sustaining and often profitable industry is one of the great successes of private enterprise. What once was the sole province of national agencies and international organizations is now dominated by a multi-billion dollar commercial market. Is human spaceflight next to go private? A movement known as NewSpace believes the answer is yes and commercial activity is about to take its place next to government in areas of human space transportation, logistics and planetary exploration, and perhaps profitably so. Some have even put their money where their mouth is and started their own NewSpace ventures. What should investors think about this?

The **NewSpace 2008** conference, held by the Space Frontier Foundation in Crystal City, Virginia from July 18<sup>th</sup> to the 20<sup>th</sup>, sought to explore this question while bringing together many entrepreneurs, investors and advocates. Many NewSpace ventures were represented at the conference, each of various levels of maturity. Among those making their appearance included **Orbital Outfitters** - a collaboration to produce spacesuits for private spaceflight and extreme environments; **Odyssey Moon** - a Google Lunar X-Prize contender; and **XCOR Aerospace** - the prominent rocket propulsion and space tourist outfit. All put on a brave face on very challenging endeavors.

NewSpace business, investment and entrepreneurship were hot topics of the Friday discussion sessions. Morning topics were focused on the growing maturity of entrepreneurial space ventures as well as on opportunities for NewSpace investors.

... described [government money] as easy but addictive money that can stunt growth...

In the session entitled “A NewSpace Exit Strategy”, a small group of angel investors and venture capitalists spoke about their experience with investing in space-related ventures and about potential exit strategies for NewSpace. Many agreed that the inexperience, riskiness and high cost of the industry had made most investments daunting and that acquisition, not IPO, is the most likely fate of even the most successful NewSpace startups. Technology spin-off to a larger firm was an often-used yet not often mentioned exit in this industry. Marco Rubin of Exoventure Associates, however, soberly reminded the panel that bankruptcy was also a very real exit.

Government money, a constant feature in big aerospace firms, was given an ambivalent assessment for startups and growth companies. Rubin described it as easy but addictive money that can stunt growth. Andrew Nelson, COO of XCOR Aerospace and formerly of the Boston Harbour Angels cautioned entrepreneurs to “avoid the cost-plus world”. Shubber Ali of George Group, however, saw the value of using some government incentives and investments as a good road to growth. On the other end of

## Conference Round-Up (cont.)

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the spectrum, “friends and family” money, the traditional seed of most startup ventures, was viewed as important and useful motivator, even for high cost aerospace activities.

The role of the government in creating a prosperous environment for NewSpace was discussed at length. COTS, NASA’s program to encourage a commercial resupply option for the International Space Stations, was applauded for its approach to commercial cooperation but concern lingered about the ability of the program to adequately fund crew transport options. Also high in attendees’ attention was relaxing the overly restrictive ITAR export control regime, the consolidation and maturation of space-related law and regulation, as well as growing excitement for government-sponsored prizes, such as the NASA-sponsored Centennial Challenges, and innovative commercial partnerships as a motivator for innovation.

Also high in attendees’ attention was relaxing the overly restrictive ITAR export control regime, the consolidation and maturation of space-related law and regulation, as well as growing excitement for government-sponsored prizes...

A keynote address by Alan Stern, former Associate Administrator of NASA’s Science Mission Directorate and now with Odyssey Moon, highlighted some of the problems with civil space agencies and a possible way forward for commercial spaceflight. At the top of his observations was the remark that NASA is inherently constrained by the “averaging function of 535 legislators” and that major advances in space development takes big pioneers, not big governments. Stern noted that most existing commercial space operations moved “bits, not atoms”, a phenomenon caused essentially by the difficulty of moving anything other than massless information. This is now changing, as private enterprise is now pursuing the ‘killer app’ of suborbital space travel, which has the potential of reaching a market of thousands of adventure seekers.

Perhaps no one expressed both the hope and concerns of NewSpace better than Rich Pournelle, Director of Business Development at XCOR Aerospace, with an overview of recent bubbles in the financial markets, their shared characteristics and their possible relevance to NewSpace. In particular, the dotcom bubble, the US housing bubble and the most recent green/clean energy bubble all underwent phases of greed (growth, investment and expansion) and fear (uncertainty, risk and contraction). Does NewSpace have the same potential for expansion as these aforementioned bubbles? Certainly fear and uncertainty with private aerospace efforts are present in copious quantities. If there are great growth opportunities, then we are indeed in the early days, still awaiting a ‘Netscape moment’, when the investment community awakens to vast off-world growth possibilities. Still, possibilities are many and whole new markets are bound to be found.

If there are great growth opportunities [in NewSpace], then we are indeed in the early days...

It can never be said that building a business, any business, is easy. Entrepreneurs risk their time, energy, reputation and sometimes their family and friends to make their goals a reality. This may be even more

## ***Conference Round-Up (cont.)***

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true in a field wracked with technical difficulty, high costs, regulatory barriers, giant competitors and investor skittishness. Regardless of the maturity of commercial human spaceflight and of the NewSpace movement, we tip our hats to the brave and intrepid souls who work towards to making these new markets a reality.

By Ian Fichtenbaum  
Near Earth LLC

# NEAR EARTH ANALYSIS: MARKET COMPARABLES

## Public Market Valuation Analysis of Selected Companies in the NEAR EARTH MEDIA INDEX

		Stock Price:		Enterprise Value as a Multiple of:			Price as a Multiple of:			
		7/29/08	Market Value of Equity	Enterprise Value (a)	LTM Sales	LTM EBITDA	LTM EBIT	LTM EPS	2008E EPS (b)	2009E EPS (b)
<b>Satellite Television (DBS)</b>										
BSY	British Sky Broadcasting (f)	\$ 4.47	\$15,837.8	\$18,454.5	2.0x	9.3x	11.4x	16.0x	14.0x	10.6x
DISH	Dish Network Corp	\$ 28.50	\$13,116.2	\$16,130.0	1.5x	5.8x	11.5x	20.0x	12.8x	11.4x
DTV	DirectTV Group Inc.	\$ 26.80	\$30,873.6	\$32,662.6	1.8x	7.4x	12.7x	21.0x	18.1x	14.0x
Mean					1.8x	7.5x	11.9x	19.0x	14.9x	12.0x
<b>Cable Television</b>										
CHTR	Charter Communications Inc.	\$ 1.15	\$469.0	\$20,503.0	3.3x	9.3x	23.1x	n/m	n/m	n/m
CMCSA	Comcast Corporation	\$ 19.18	\$57,751.7	\$88,475.7	2.8x	7.1x	14.2x	22.2x	21.6x	17.4x
MCCC	Mediacom Communications Corp.	\$ 5.71	\$542.8	\$3,751.3	2.8x	7.9x	16.0x	n/m	n/m	28.6x
TWC	Time Warner Cable Inc.	\$ 26.55	\$25,937.8	\$41,327.8	2.5x	7.1x	14.5x	23.7x	20.9x	19.5x
Mean					2.9x	7.8x	17.0x	22.9x	21.2x	21.8x
<b>Television</b>										
TVL	LIN TV Corp.	\$ 6.30	\$325.2	\$1,172.3	3.0x	7.0x	10.9x	10.3x	9.7x	15.0x
SBGI	Sinclair Broadcast Group	\$ 7.52	\$706.6	\$2,057.1	2.8x	6.4x	12.3x	8.7x	8.6x	12.1x
YBTV	Young Broadcasting Inc.	\$ 0.15	\$3.3	\$814.2	5.3x	18.6x	n/m	n/m	n/m	n/m
Mean					3.7x	10.7x	11.6x	9.5x	9.2x	13.6x
<b>Satellite Radio (DARS)</b>										
SIRI	Sirius Satellite Radio	\$ 1.58	\$4,690.7	\$7,365.1	3.8x	n/m	n/m	n/m	n/m	n/m
WRSP	Worldspace	\$ 1.74	\$73.7	\$178.4	12.9x	n/m	n/m	n/m	n/m	n/m
Mean					8.4x					
<b>Radio</b>										
CCU	Clear Channel	\$ 35.94	\$17,840.2	\$23,640.4	3.5x	10.6x	14.0x	25.9x	24.0x	24.3x
CMLS	Cumulus Media Inc.	\$ 2.96	\$127.4	\$668.4	2.0x	7.8x	9.3x	n/m	17.4x	13.5x
CXR	Cox Radio Inc.	\$ 10.41	\$919.6	\$1,258.1	2.8x	8.4x	9.0x	7.8x	14.1x	14.5x
EMMS	Emmis Communications Corp.	\$ 1.76	\$64.9	\$686.5	1.9x	8.3x	9.8x	0.6x	n/m	n/m
ETM	Entercom Communications	\$ 6.02	\$227.2	\$1,164.4	2.5x	7.5x	8.5x	2.7x	4.8x	5.0x
ROIA	Radio One Inc.	\$ 1.42	\$140.2	\$947.2	2.9x	9.0x	10.5x	5.5x	15.8x	10.1x
Mean					2.6x	8.6x	10.2x	8.5x	15.2x	13.5x
<b>NewsPrint</b>										
MNI	The McClatchy Company	\$ 4.54	\$373.1	\$2,853.1	1.3x	5.3x	7.2x	1.5x	5.3x	5.7x
NYT	New York Times	\$ 12.59	\$1,813.0	\$2,501.6	0.8x	6.6x	13.2x	18.1x	15.5x	16.8x
WPO	Washington Post	\$ 602.24	\$5,729.1	\$5,968.1	1.4x	8.5x	13.2x	21.8x	20.9x	19.1x
Mean					1.2x	6.8x	11.2x	13.8x	13.9x	13.9x
<b>MEDIA SERVICES INDEX (excludes Satellite Radio (DARS) stocks)</b>										
High					5.3x	18.6x	23.1x	25.9x	24.0x	28.6x
Mean					2.5x	8.3x	12.3x	13.7x	14.9x	14.8x
Low					0.8x	5.3x	7.2x	0.6x	4.8x	5.0x

## Public Market Valuation Analysis of Selected Companies in the NEAR EARTH TELECOM INDEX

		Stock Price:		Enterprise Value as a Multiple of:			Price as a Multiple of:			
		7/29/08	Value of Equity	Enterprise Value (a)	LTM Sales	LTM EBITDA	LTM EBIT	LTM EPS	2008E EPS (b)	2009E EPS (b)
<b>Satellite Capacity Leasing (FSS)</b>										
ETL.PA	Eutelsat Communications	\$ 17.13	\$5,805.6	\$9,370.8	7.1x	8.9x	16.0x	20.2x	21.7x	19.0x
LORL	Loral Space & Comm. Inc.	\$ 15.60	\$316.4	\$426.3	0.5x	5.2x	19.5x	n/m	n/m	n/m
SESG.PA	SES Global S.A. ( c)	\$ 24.66	\$10,946.3	\$15,953.8	6.4x	9.4x	16.7x	17.4x	16.2x	15.0x
Mean					4.7x	7.8x	17.4x	18.8x	18.9x	17.0x
<b>Satellite Equipment Manufacturers &amp; Integrators</b>										
CDV	COM DEV International (d)	\$ 3.55	\$242.1	\$237.8	1.4x	20.9x	n/m	31.0x	13.9x	8.9x
CMTL	Comtech Telecommunications	\$ 49.10	\$1,347.3	\$1,111.4	2.2x	10.1x	11.0x	17.6x	14.7x	13.5x
GCOM	Globecom Systems Inc.	\$ 9.23	\$184.9	\$142.3	0.8x	7.8x	11.2x	13.8x	13.0x	15.6x
GILT	Gilat Satellite Networks	\$ 10.84	\$457.5	\$334.6	1.2x	9.8x	18.6x	20.8x	18.7x	17.5x
HUGH	Hughes Communications, Inc.	\$ 43.33	\$832.2	\$1,299.1	1.3x	9.3x	14.8x	17.4x	34.9x	15.3x
ISYS	Integral Systems Inc.	\$ 46.06	\$403.4	\$394.1	2.6x	14.1x	15.4x	20.5x	21.2x	18.9x
ORB	Orbital Sciences	\$ 25.66	\$1,551.1	\$1,450.6	1.3x	13.4x	16.0x	26.3x	27.0x	24.4x
RADN	Radyne Comstream Inc.	\$ 11.47	\$215.7	\$187.0	1.3x	10.5x	13.3x	21.4x	21.6x	17.6x
SATS	EchoStar Corp.	\$ 32.16	\$2,931.0	\$2,448.9	1.5x	n/m	n/m	n/m	n/m	n/m
VSAT	ViaSat Inc.	\$ 23.72	\$766.4	\$635.6	1.3x	9.6x	20.3x	23.5x	15.2x	13.2x
Mean					1.5x	10.6x	15.1x	20.2x	20.8x	17.0x
<b>Towers</b>										
AMT	American Tower	\$ 41.34	\$16,411.3	\$16,296.5	11.0x	17.6x	n/m	n/m	n/m	n/m
CCI	Crown Castle	\$ 37.42	\$10,568.4	\$16,928.4	11.8x	21.9x	n/m	n/m	n/m	n/m
SBAC	SBA Communications	\$ 37.13	\$4,115.9	\$5,933.9	14.1x	28.1x	n/m	n/m	n/m	n/m
Mean					12.3x	22.5x				
<b>General Telecom</b>										
S	Sprint Nextel Corporation	\$ 8.49	\$24,196.5	\$43,738.5	1.1x	4.7x	n/m	n/m	n/m	n/m
T	AT&T	\$ 30.70	\$213,313.3	\$284,840.3	2.4x	6.7x	13.1x	17.0x	11.9x	10.7x
VZ	Verizon Communications, Inc.	\$ 34.13	\$109,237.7	\$172,997.7	1.8x	5.7x	10.7x	19.3x	13.8x	12.5x
Mean					1.8x	5.7x	11.9x	18.1x	12.9x	11.6x
<b>TELECOM SERVICES INDEX (excludes Towers stocks)</b>										
High					7.1x	20.9x	20.3x	31.0x	34.9x	24.4x
Mean					2.1x	9.7x	15.1x	19.0x	18.8x	15.5x
Low					0.5x	4.7x	10.7x	13.8x	11.9x	8.9x

(b) EPS estimates from Thompson First Call. Near Earth does not estimate EPS and does not condone or validate these estimates.

n/m Not Meaningful.

(c) Converted to US \$ from Euro at an exchange rate of 1.5556 US \$ per Euro.

(d) Converted to US \$ from C\$ at an exchange rate of 0.9769 US \$ per C\$.

(f) Converted to US \$ from British Pound at an exchange rate of 1.9794 US \$ per British Pound.

# NEAR EARTH ANALYSIS: M&A TRANSACTIONS

## Selected Satellite, Telecom & Media Transactions (US\$ in millions)

Date Announced	Acquiror	Target	Equity Value (a)	Transaction Value (b)	Transaction Value/	
					LTM Sales	LTM EBITDA
<b>Satellite Operators</b>						
04/21/04	KKR	PanAmSat Corporation	\$3,532.0	\$4,300.0	5.2x	7.7x
06/06/04	Blackstone Group	New Skies Satellites NV	956.0	956.0	4.5x	7.7x
08/17/04	Zeus Holdings	Intelsat Ltd.	3,100.0	5,000.0	5.2x	7.6x
08/29/05	Intelsat Ltd.	PanAmSat Holding Corporation	3,065.0	6,271.1	7.5x	9.7x
12/14/05	SES Global	New Skies Satellites NV	760.0	1,160.0	5.0x	8.0x
12/05/06	Abertis Telecom	EutelSat (32% share)	1,000.0	1,838.0	7.3x	9.7x
12/18/06	Telesat (new)	Telesat (old)	2,800.0	2,940.0	7.1x	12.0x
12/18/06	Telesat (new)	Loral Skynet	691.0	1,050.0	7.1x	19.6x
12/18/06	Telesat (new)	Telesat/Skynet Combined	3,491.0	3,990.0	7.1x	13.4x
06/19/07	BC Partners	Intelsat	5,000.0	16,400.0	7.7x	11.3x
08/02/07	Abertis Telecom	Hispasat (28.4% share) (Pending)	199.0	199.0	5.8x	7.9x
				Mean	6.3x	10.4x
<b>Ground Equipment &amp; Systems Integrators</b>						
12/06/04	SkyTerra / Apollo	HNS (Hughes' VSAT, Broadband)	\$110.0	\$415.0	0.8x	n/d
03/03/05	Radyne Comstream	Xicom Technology	41.0	46.0	1.1x	n/d
08/15/05	Stratos	Xantic	191.0	191.0	1.1x	n/d
11/11/05	SkyTerra / Apollo	HNS (Hughes' VSAT, Broadband)	155.0	460.0	0.8x	n/d
11/21/05	Viasat	Efficient Channel Coding Inc.	25.5	25.5	n/d	n/d
08/03/06	Thrane & Thrane	Nera's Mobile Satellite Communications	89.6	89.6	1.1x	n/d
03/31/08	The Gores Group LLC, Mivtach	Gilat	453.1	475.0	1.6x	14.1x
05/12/08	Comtech	Radyne	201.9	223.6	1.5x	16.0x
07/10/08	Nokia	Navteq	7,719.0	8,100.0	8.8x	29.5x
				Mean	1.1x	15.1x
<b>Aerospace and Defense</b>						
04/23/07	Kratos	SYS Technologies	49.3	49.3	0.6x	n/m
05/03/07	Globecom	GlobalSat	18.4	18.4	0.9x	n/d
07/31/07	LMI Aerospace, Inc.	D3 Technologies, Inc.	65.0	65.0	1.0x	7.2x
05/13/08	Cobham plc	M/A-COM	425.0	425.0	0.9x	6.8x
06/04/08	Cobham plc	Sparta Inc	-	416.0	1.4x	12.1x
				Mean	1.0x	8.7x
<b>Video Distribution Equipment</b>						
09/29/05	International Datacasting	Proflin (c)	4.5	3.9	1.1x	n/d
11/18/05	Cisco	Scientific Atlanta	6,900.0	5,300.0	2.7x	13.2x
02/08/06	Tandberg Television	Skystream	80.0	80.0	2.6x	n/d
07/25/06	Motorola	Broadbus Technologies	181.0	181.0	n/d	n/d
08/21/06	Cisco	Arroyo Video Solutions, Inc	92.0	92.0	n/d	n/d
08/22/06	Harmonic	Entone Tech.	45.0	45.0	n/d	n/d
12/21/06	Motorola	Tut Systems	39.0	39.0	1.0x	n/d
				Mean	1.9x	13.2x
<b>Towers</b>						
07/04/04	Global Signal	Lattice Communications	\$115.0	\$115.0	9.4x	n/d
05/04/05	American Tower	Spectrasite	3,100.0	3,800.0	10.2x	17.0x
03/17/06	Crown Castle	Trintel Communications	145.0	145.0	10.1x	n/d
03/17/06	SBA Communications Corp	AAT Communications Corp	1,002.0	1,002.0	12.0x	17.9x
05/08/06	Crown Castle	Mountain Union Telecom LLC		309.0	11.9x	n/d
10/06/06	Crown Castle	Global Signal	4,000.0	5,800.0	12.1x	26.6x
				Mean	10.9x	20.5x
<b>General Telecom (Wireless)</b>						
02/17/04	Cingular	AT&T Wireless	\$40,770.0	\$47,105.0	2.8x	10.7x
12/15/04	Sprint Corp	Nextel Communications Inc	28,449.0	36,200.0	2.7x	7.1x
01/05/05	Alltel	Western Wireless	4,300.0	6,181.0	3.2x	10.7x
07/01/05	Sprint Nextel Corporation	US Unwired, Inc.	1,000.0	1,266.0	2.9x	13.2x
03/06/06	AT&T (new)	Bell South	67,000.0	89,000.0	4.3x	10.7x
				Mean	3.2x	10.5x
<b>Television</b>						
03/31/05	Lin TV Corp.	WNDY-TV, WWHO-TV	\$85.0	\$85.0	4.3x	12.9x
05/10/05	Various Acquirors (d)	Emmis Comm TV Portfolio	1,350.0	1,350.0	5.2x	14.6x
06/30/05	Univision Communications	WLII (2 TV Stations in Puerto Rico)	190.0	190.0	4.0x	16.7x
03/29/07	Umbrella Holdings LLC	Univision Communications	12,300.0	13,700.0	6.3x	18.1x
				Mean	4.9x	15.6x
<b>Radio</b>						
09/29/04	Capital Radio	GWR Group	\$611.0	\$728.0	3.1x	13.4x
06/21/05	Emap PLC	Scottish Radio Holdings	713.0	793.0	4.5x	17.7x
11/01/05	Cumulus Media Inc.	Susquehanna Radio	1,200.0	1,200.0	n/d	15.0x
02/07/06	Citadel Broadcasting	Disney (ABC Radio)	1,500.0	2,700.0	4.7x	13.5x
				Mean	4.1x	14.9x
<b>New Media</b>						
02/17/05	New York Times	About, Inc	410.0	410.0	10.0x	30.0x
03/21/05	IAC	AskJeeves	1,850.0	1,850.0	5.8x	19.0x
06/06/05	E.W. Scripps Co.	Shopzilla Inc.	525.0	525.0	4.0x	15.9x
07/18/05	News Corp.	Intermix (MySpace.com)	580.0	571.0	6.4x	n/m
03/06/06	NBC Universal	iVillage Inc.	600.0	550.0	6.0x	32.4x
03/15/07	Cisco	WebEx	2,900.0	2,900.0	7.6	29.3
01/31/08	Amazon.com	Audible	280.7	257.0	2.4x	n/m
02/11/08	Microsoft	Danger	-	500.0	8.9x	n/m
03/04/08	Demand Media	Pluck	-	75.0	7.5x	n/d
05/28/08	comScore	M:Metrics	-	44.3	4.0x	n/d
05/15/08	CBS	CNET	1,800.0	1,800.0	4.4x	n/m
				Mean	5.8x	22.7x

(a) When Equity Value was not disclosed, Transaction Value was used

(b) Calculated as Value of Equity plus interest bearing liabilities and preferred stock, less cash & equivalents

(c) Values reflect closing figures. Converted at 1.1757 C\$ per US\$

(d) Transaction includes the divestiture of Emmis' TV portfolio to: Lin TV (\$260M), Journal Comm (\$235M), Gray (\$186M), Blackstone (\$259M)  
It also includes estimated transaction value of \$410M for the final sale of 3 TV stations. This is predicted to occur sometime in 2005.

n/d Not Disclosed

n/m Not Meaningful

## ***ABOUT NEAR EARTH LLC***

Near Earth is a specialized Investment Bank which brings the highest quality senior level attention to companies in the greater commercial satellite/space, telecom, media, entertainment, and technology industries.

Near Earth provides a full range of capital raising, advisory and consulting services to companies and their Boards. We also provide financial advisory services, valuation, structuring, and due diligence support to private equity, hedge and distressed debt funds. Please contact us if you would like our assistance with a contemplated satellite, telecom or media investment or portfolio divestment.

For more information about our current assignments or about Near Earth LLC, please visit our website at [www.nearearthllc.com](http://www.nearearthllc.com) or contact us at our location below:

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