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SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR KING COUNTY

DAVID A. MONTANARO on behalf of  
Teledesic Corporation, pursuant to CR 23.1,

Plaintiff,

v.

CRAIG O. McCaw; DENNIS WEIBLING;  
EAGLE RIVER INVESTMENTS LLC; W.  
RUSSELL DAGGATT; STEVEN A.  
HOOPER; THOMAS A. ALBERG; MICHAEL  
LARSON; EDWARD TUCK; WILLIAM A.  
OWENS; KEITH BANE, RICHARD  
SEVERNS, and TELEDESIC  
CORPORATION.

Defendants.

NO. 01-2-10194-3 SEA

FOURTH AMENDED COMPLAINT FOR  
MONEY DAMAGES AND INJUNCTIVE  
RELIEF

**I. PARTIES**

**1.1 Plaintiff.** David A. Montanaro is a shareholder of Teledesic Corporation and a resident of King County, Washington. Mr. Montanaro, formerly Vice President of Strategic Relations of Teledesic, owns 377,500 shares of Teledesic common stock. On information and belief, he is the largest individual shareholder of Teledesic not affiliated with Mr. McCaw.

1           **1.2     Defendant McCaw.** Craig O. McCaw is a resident of King County,  
2  
3 Washington. Mr. McCaw is the Chairman of the Board of Directors and co-CEO of Teledesic.  
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5 All acts performed by Mr. McCaw related to this matter were also performed on behalf of  
6  
7 Eagle River.

8           **1.3     Defendant Weibling.** Dennis Weibling is a resident of King County,  
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10 Washington. Dennis Weibling is a member of the Board of Directors of Teledesic. All acts  
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12 performed by Mr. Weibling related to this matter were also performed on behalf of Mr. McCaw  
13  
14 and/or Eagle River.

15           **1.4     Defendant Eagle River.** Eagle River Investments, LLC (“Eagle River”) is a  
16  
17 Washington limited liability corporation and is an investment vehicle for Mr. McCaw. All acts  
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19 performed by Eagle River related to this matter were also performed on behalf of Mr. McCaw.  
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22           **1.5     Defendant Daggatt.** W. Russell Daggatt is a resident of King County,  
23  
24 Washington. Mr. Daggatt was a member of the board of directors of Teledesic at the time of  
25  
26 the acts complained of herein.

27           **1.6     Defendant Hooper.** Steven A. Hooper is a resident of King County,  
28  
29 Washington. Mr. Hooper was a member of the board of directors of Teledesic at the time of  
30  
31 the acts complained of herein.  
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34           **1.7     Defendant Alberg.** Thomas A. Alberg is a resident of King County,  
35  
36 Washington. Mr. Alberg was a member of the board of directors of Teledesic at the time of the  
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38 acts complained of herein.  
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40           **1.8     Defendant Larson.** Michael Larson is a resident of King County, Washington.  
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42 Mr. Larson was a member of the board of directors of Teledesic at the time of the acts  
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44 complained of herein.  
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### III FACTS ENTITLING PLAINTIFF TO RELIEF

#### 3.1 The McCaw Entities and Related Background Information.

a. Corporations Controlled by Mr. McCaw. This case involves a number of corporations controlled by Craig McCaw:

- **Teledesic LLC**<sup>1</sup> (“Teledesic”) is a development stage company and was formed to develop and operate a global broadband satellite communications network.
- **New ICO Global Communications Holdings** (“New ICO”) is a development stage company and is a successor to ICO Global Communications Holdings (“ICO”) after ICO’s emergence from Chapter 11 bankruptcy proceedings. New ICO is developing a satellite system to offer mobile voice services and medium-speed wireless data services on a global basis.
- **ICO-Teledesic Global Ltd.** (“ITGL”) is a holding company that was formed to facilitate the merger of Teledesic and New ICO.
- **Parent** is the yet-to-be-named company that will hold the wholly owned subsidiaries of the merged ITGL, New ICO and ITGL entities.
- **Eagle River Investments, LLC** (“Eagle River”) is a Washington limited liability corporation and is an investment vehicle for Mr. McCaw.
- **Nextel Communications Incorporated** (“Nextel”) is a publicly traded company providing mobile voice and data communications services.

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<sup>1</sup> Teledesic consists of a complex corporate structure involving three entities: (a) Teledesic Corporation, a Delaware Corporation; (b) Teledesic Holdings Limited, a Bermuda Corporation; and (c) Teledesic LLC, the operating entity. Both Teledesic Corporation and Teledesic Holdings Limited are members of Teledesic LLC of which Teledesic Corporation is the managing member.

- **XO Communications** (“XO”) is a publicly traded company providing competitive local exchange carrier and data communications services.

**b. Mr. McCaw’s Ownership Interest and Voting Control.**

**McCaw Ownership Interests in the Entities Involved**

	Teledesic	New ICO	ITGL	Parent	Eagle River	Nextel	XO
<b>Ownership</b>	20%	42%	58%	40%	Unknown	6%	12%
<b>Control</b>	Voting Control	Voting Control	Voting Control	Voting Control	Voting Control	Voting Control	Voting Control

**c. Mr. McCaw’s Interlocking Boards of Directors.** The overlap between the Board of Directors, and the officers, of the various McCaw-controlled corporations is extensive:

**Interlocking Corporate Governance in the McCaw Empire**

	Teledesic	New-ICO	ITGL	Parent	Eagle River	Nextel	XO	Cable Plus <sup>2</sup>
<b>Craig McCaw</b>	Chairman and Co-CEO	Chairman	Chairman	Chairman	Chairman	Director	Director	Director
<b>Dennis Weibling</b>	Director	Director	Director and President	Director	Director and President	Director	Director	Treasurer and Director
<b>Bill Hoglund</b>	Acting CFO	President			CFO	Director		
<b>Steve Hooper</b>	Director and Co-CEO	Director		Director			Director and CEO	Director
<b>Russ Daggatt</b>	Vice Chairman and President	Director and Acting CEO	Director and CEO	Vice Chairman				
<b>William Owens</b>	Vice Chairman and Co-CEO		Vice Chairman	Vice Chairman				

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<sup>2</sup> Cable Plus was formed to provide cable TV and communications services primarily to multi-family, multi tenant dwellings. It was controlled by Mr. McCaw and is no longer in existence.

	Teledesic	New-ICO	ITGL	Parent	Eagle River	Nextel	XO	Cable Plus <sup>2</sup>
Jim Judson			Corporate Secretary		General Counsel			
Dan Akerson					Co-Chairman	Chairman and CEO	Chairman and CEO	

d. **Teledesic’s Conflicted and Interested Board.** At the time of the transactions complained of herein the Teledesic Board of Directors was comprised entirely of individuals who are beholden to Mr. McCaw or have conflicts of interests with related parties, or both. Each director of the Teledesic Board either has now or in the past had a significant economic relationship with Mr. McCaw or a McCaw controlled entity independent of Teledesic.

**Teledesic Board**

Member - Title	Conflict
<b>Craig McCaw</b> Chairman and co-CEO	Controlling interest in Teledesic, New ICO, ITGL, Parent, Eagle River, Nextel and XO.
<b>William Owens</b> Vice Chairman and co-CEO	ITGL and Parent Vice Chairman. Mr. Owens has exercisable options to purchase 248,077 shares of ITGL stock <sup>3</sup> . Mr. Owens assisted Mr. McCaw’s other organizations in fund raising and business development activities with the U.S. government.

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<sup>3</sup> ICO Teledesic Global Ltd. S-4 Registration Statement filed with the Securities and Exchange Commission on September 20, 2000 (“S-4”) at 141. Full text of the registrations statement filed with the SEC can be found on the EDGAR System ([www.freedgear.com](http://www.freedgear.com), filed under “ICO Teledesic Global Ltd”). All page number references in this Complaint refer to the EDGAR page numbering system.

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<b>Russ Daggatt</b> Vice Chairman	Former Director and acting CEO of New ICO, former Director and CEO of ITGL, Vice Chairman of Parent. Mr. Daggatt was the leader of Mr. McCaw's efforts to acquire New ICO from bankruptcy protection, and was the sole recipient of an \$18.5 million Teledesic cash stock buy-back agreement from Eagle River. Mr. Daggatt holds 880,250 shares of ITGL stock and has exercisable options to purchase 742,374 shares <sup>4</sup>
<b>Dennis Weibling</b> Director	President of Eagle River since 1994 (employee since 1993), ITGL, New ICO, Parent, XO and Nextel Director. Prior to commencing his relationship with Mr. McCaw and Eagle River, Mr. Weibling was a member of a local public accounting firm. Mr. Weibling's personnel wealth has been both determined by and closely linked to his relationship with Mr. McCaw. In just two of his many reported stock transactions Mr. Weibling realized over \$70 million from the sale of XO stock. <sup>5</sup>
<b>Steve Hooper</b> Director	New ICO, Parent, XO and Cable Plus Director. Mr. Hooper was the Executive Vice President and CFO of McCaw Cellular <sup>6</sup> , a company he joined in 1983. Subsequent to McCaw Cellular's merger with AT&T, Mr. Hooper has acted in various capacities with other McCaw entities including tenure as the CEO and Chairman of XO. Mr. Hooper's personnel wealth has been both determined by and closely linked to his relationship with Mr. McCaw. In his last three years of employment with McCaw Cellular, Mr. Hooper received over \$1 million in cash compensation and stock options worth over \$15 million <sup>7</sup> . Mr. Hooper currently owns 564 thousand shares of XO stock and holds options to purchase 1 million additional shares of XO stock. <sup>8</sup> Mr. Hooper received \$273,833 in cash compensation in 1999 for his services to Mr. McCaw and XO.

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<sup>4</sup> S-4 at 141.

<sup>5</sup> As reported by "Insider Trader" of Edgar Online, trade dates were 5/4/2000 and 6/5/2000 for 402,500 and 332,500 shares respectively.

<sup>6</sup> McCaw Cellular was a publicly traded cellular communications company controlled by Mr. McCaw. McCaw Cellular became AT&T Wireless Communications, a wholly owned subsidiary of AT&T as a result of a 1994 merger.

<sup>7</sup> As reported in the Definitive Proxy Statement for McCaw Cellular Communications Incorporated, filed April 21, 1994.

<sup>8</sup> As reported in the Nextlink Communications Incorporated (XO), filed April 24, 2000

<p>1 2 3 4 5 6 7 8 9 10 11</p> <p><b>Tom Alberg</b> Director</p>	<p>Served as president of LIN Broadcasting and Executive Vice President from 1990 to 1994. LIN Broadcasting was 52% owned by McCaw Cellular at the time and Mr. Alberg was handpicked to oversee the operation for Mr. McCaw. Prior to commencing his relationship with Mr. McCaw, Mr. Alberg was a Partner of a local law firm. Mr. Alberg maintains a close connection to Mr. McCaw and was selected by Mr. McCaw to fill a Teledesic board seat. Mr. Alberg's personal wealth has been closely linked to his relationship with Mr. McCaw. In connection with the AT&amp;T merger with McCaw Cellular, Mr. Alberg received severance, option and stock appreciation packages totaling in excess of \$10 million.<sup>9</sup></p>
<p>12 13 14 15</p> <p><b>Michael Larson</b> Director</p>	<p>ITGL Director. Manages Bill Gates' investments in Teledesic and ITGL. Mr. Gates has a \$100 million investment directly in ITGL. Mr. Larson is responsible for Teledesic's cash management. Mr. Gates, through Microsoft, also has a \$600 million investment in Nextel.</p>
<p>16 17 18 19 20 21 22 23 24 25</p> <p><b>Keith Bane</b> Director</p>	<p>Nextel Director, Executive Vice President, Motorola, and President, Global Strategy and Corporate Development Group and Motorola employee since 1973. Mr. Bane is responsible for Motorola's exclusive supply relationship with Nextel. Mr. Bane has worked closely with Mr. Weibling (who once served as Nextel's CEO) since 1995. Motorola owns approximately 15% of the common stock of Nextel, a McCaw controlled company, and 100% of the Class B stock. In 2000 Nextel paid \$2.65 billion for goods and services provided by Motorola. As of December 31, 2000 Nextel had outstanding accounts payable with Motorola of \$401 million.<sup>10</sup></p>
<p>26 27 28 29 30 31 32 33</p> <p><b>Richard Severns</b> Director</p>	<p>Corporate Vice President and career employee of Motorola. Mr. Severns is the executive in charge of the Motorola – Teledesic relationship and transactions which included generous valuations for the Teledesic purchase of various Motorola assets and lucrative engineering service contracts for Motorola in exchange for minimum up front commitments. Motorola owns approximately 15% of the common stock of Nextel, a McCaw controlled company, and 100% of the Class B stock. In 2000 Nextel paid \$2.65 billion for good and services provided by Motorola.</p>
<p>34 35 36 37</p> <p><b>Ed Tuck</b> Director</p>	<p>Chosen by Mr. McCaw to lead various investigations and due diligence efforts of potential business acquisitions and explorations for Eagle River in the aerospace and communications industries.</p>

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<sup>9</sup> As reported in the Definitive Proxy Statement for McCaw Cellular Communications Incorporated, filed April 21, 1994.

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<sup>10</sup> As reported in the Definitive Proxy Statement for Nextel Communications Incorporated, filed April 13, 2001

1                   e.     **Teledesic Board Configuration Enables McCaw Manipulations.** The  
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3 Teledesic board makeup has been established specifically to enable Mr. McCaw to control  
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5 Teledesic and appropriate the assets of Teledesic for his own personal benefit and that of a  
6  
7 select group of shareholders. The S-4 cautions against Mr. McCaw’s ability to control all the  
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9 entities involved in future transactions, but makes no reference to the fact that he has - both  
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11 prior and subsequent to the September 20, 2000 filing of the S-4 - treated these entities as if  
12  
13 they were a single entity, by freely shifting assets, resources and priorities to best suit his own  
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15 interests. The S-4, itself, clearly recognizes these multiple conflicts of interest with many  
16  
17 references throughout the document:

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19       •     “You should know there are many overlapping or interlocking  
20           relationships among several directors, stockholders, officers and  
21           employees of ITGL, New ICO and Teledesic. These  
22           relationships may create conflicts of interest between you and the  
23           persons in these relationships.” (S-4 at 13).
- 24  
25       •     “ONE STOCKHOLDER WILL BE ABLE TO CONTROL OUR  
26           MANAGEMENT AND CORPORATE AFFAIRS AND COULD  
27           PROHIBIT A FUTURE CHANGE OF CONTROL  
28           TRANSACTION THAT YOU MIGHT CONSIDER  
29           BENEFICIAL  
30           . . . Mr. McCaw, primarily through this majority ownership and  
31           control of Eagle River, will own or control more than 60% of the  
32           voting power of the outstanding shares of Parent. Therefore, he  
33           will have the ability to elect a majority of Parent’s board of  
34           directors, and otherwise to determine matters affecting our  
35           business or requiring shareholder approval, except as otherwise  
36           required by law.  
37           The presence of a controlling stockholder also could discourage  
38           others from initiating any potential merger, takeover, or other  
39           change of control transaction that may otherwise be beneficial to  
40           our business or to you. This control could also reduce the price  
41           that investors are willing to pay in the future for shares of  
42           Parent’s capital stock.” (S-4 at 24-25).

- 1 • MR. McCAW HAS AN INTEREST IN COMPANIES THAT  
2 MAY BE COMPETITIVE WITH OUR BUSINESS.  
3 Mr. McCaw invests in and has effective control of several  
4 companies in the telecommunications industry. We do not have a  
5 non-competition agreement with Mr. McCaw or his affiliates.  
6 Conflicts of interest may arise from Mr. McCaw’s or his  
7 affiliates’ holdings in these or future companies.” (*Id.* at 25).  
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- 10 • “INTERESTS OF CERTAIN PERSONS IN THE MERGERS  
11 You should be aware of the interests of executive officers and  
12 directors of the three companies have [sic] in the New ICO and  
13 Teledesic mergers. These interests are different from and in  
14 addition to your and their interests as stockholders. . . .” (*Id.* at  
15 73-76).  
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- 18 • “Common Directors. The directors of each of ITGL, New ICO  
19 or Teledesic who also are directors of one or more of the other  
20 entities are as follows:  
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Name	ITGL Director	New ICO Director	Teledesic Director
Craig O. McCaw	Yes	Yes	Yes
Michael Larson	Yes	No	Yes
W. Russell Daggatt	Yes	Yes	Yes
Dennis Weibling	Yes	Yes	Yes
Steven A. Hooper	No	Yes	Yes
William A. Owens	Yes	No	Yes

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38 *Id.* at 74 (emphasis supplied).

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40 f. **Several Conflicted Transactions Highlighted in S-4.** Certain  
41 conflicting transactions among ITGL, New ICO and Teledesic and their respective officers,  
42 directors and major stockholders are highlighted in the S-4.  
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- 1 • Option grant to Cascade LLC to purchase 5.5 million shares of ITGL stock.  
2 S-4 at 75  
3
- 4 • \$18.5 million Teledesic cash stock buyback commitment by Eagle River to  
5 Mr. Daggatt. S-4 at 75  
6
- 7 • \$200 million Teledesic loan to ITGL. See section 3.5. S-4 at 75  
8
- 9 • Pre-emptive ITGL stock purchase rights granted to Cascade LLC. S-4 at 75  
10
- 11 • Assignments by Teledesic to New ICO of the rights and privileges of a  
12 launch services contract arrangement with Lockheed Martin Commercial  
13 Launch Services while Teledesic retains all liability under the agreement. S-  
14 4 at 75 (emphasis supplied)  
15
- 16 • \$190 million loan (and subsequent repayment) by certain Eagle River  
17 affiliates to ITGL. S-4 at 75  
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- 19 • ITGL granting of preferential registration rights to Eagle River and Cascade  
20 investments. S-4 at 76  
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- 22 • ITGL indemnification agreements granted to Cascade and Eagle River. S-4  
23 at 76  
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- 25 • ITGL indemnification agreements granted to Cascade and Eagle River. S-4  
26 at 76  
27

28 g. **Influential Teledesic Shareholders Received Special Benefits From**

29 **Certain Transactions**. Teledesic's largest shareholders as well as, several other smaller  
30 shareholders affiliated with Mr. McCaw all received substantial consideration or benefits from  
31 the transactions outlined in this Complaint. These considerations and benefits were not  
32 afforded to Mr. Montanaro or to other small shareholders. Some examples are as follows:  
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Entity	Special Consideration
<b>Craig McCaw</b>	\$350 million worth of options, \$200 million loan, increased ownership potential and control of combined entity, use of Teledesic name, use of Teledesic resources, preferential treatment in modified shareholder agreements/rights.
<b>Eagle River</b>	\$350 million worth of options, \$200 million loan, increased ownership potential and control of combined entity, use of Teledesic name, use of Teledesic resources, preferential treatment in modified shareholder agreements/rights.
<b>Bill Gates and Cascade LLC</b>	\$32 million worth of options preferential treatment on ITGL investment, preferential treatment in modified shareholder agreements/rights, registration rights for ITGL shares, indemnification.
<b>Motorola</b>	Preferential treatment on valuation of assets contributed, special forgiveness of \$50 million owed to Teledesic.

3.2 **Director’s Financial Exposure.** Upon information and belief, the financial exposure of the individual defendants in this litigation substantially exceeds their net worth in almost every case. This situation is likely to cloud their judgment in any review of the allegations contained in this Complaint.

3.3 **The Abandoned Teledesic-New ICO-ITGL Merger.** In May of 2000, Teledesic announced a 3-way merger with ITGL and New-ICO. The S-4, pages 309-349, contains the merger agreement and amendment outlining the terms of the merger between Teledesic and New ICO. The first of these documents was approved by the Teledesic board of directors and signed on May 12, 2000. Prior to the merger agreement being signed, Mr. McCaw formed ITGL as part of his scheme to divert resources from Teledesic and leverage his own control and ownership in New ICO.

ITGL is a Delaware corporation formed in February 2000 to facilitate the mergers. To date, ITGL has had no operations or business activity other than to negotiate the merger agreements and engage in financing

1 activities with respect to itself, Old ICO and New ICO. As a result of the  
2 New ICO merger, ITGL will cease to exist.  
3

4 S-4 at 104.  
5

6 As of the date of this filing, Teledesic has announced that the merger has been abandoned.  
7

### 8 **3.4 Background of the ICO Bankruptcy.** 9

10 **a. Overview of ICO.** ICO was incorporated in early January 1995. The  
11 company was formed to deploy a network of medium-Earth orbit satellites to provide mobile  
12 voice communication and limited data service services on a global basis. Initial investors,  
13 many of them global telecommunications companies, contributed approximately \$2 billion in  
14 capital during the first two years of its existence. In 1997, ICO held an Initial Public Offering  
15 and raised approximately \$330 million.  
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22 **b. ICO Bankruptcy.** In August of 1999 ICO filed for bankruptcy  
23 protection. At the same time, it hired the investment banking firm Wasserstein Perella (“WP”)  
24 to put together a debtor-in-possession plan and solicit offers for participation in a corporate  
25 restructuring. WP’s plan was to attract \$1.2 billion in new capital (what ICO needed to  
26 complete its network and establish operations) and to provide equity (approximately 25% of  
27 the company) to the existing creditors and future distribution partners. The proposal was to  
28 obtain the first tranche of \$225 million in secured financing before the end of 1999, the second  
29 tranche of \$275 million in early 2000 and the final bankruptcy exit financing of \$700 million  
30 after a reorganization plan was accepted by the bankruptcy court. The total value of the WP  
31 plan for ICO was approximately \$1.6 billion. The investment bank Credit Suisse First Boston  
32 was brought in to act as the administrator of the tranche I and II loans to ICO. WP solicited  
33 offers on a priority basis from all existing ICO equity and debt holders as well as from many  
34 new sources of capital. Mr. McCaw, utilizing Teledesic personnel, became involved in  
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1 discussions with WP and ultimately proposed several changes to the original restructuring plan  
2 and terms envisioned by WP and ICO. Mr. McCaw emerged as the successful bidder to lead  
3 ICO's debtor-in-possession financing. ICO became New ICO when it exited from bankruptcy  
4 protection on May 17, 2001.  
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9 **3.5 \$200 Million Loan to ITGL.**

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11 **a. General Description.** Teledesic's \$200 million loan to ITGL is  
12 dramatic evidence of Mr. McCaw's abuse of Teledesic assets and breach of his fiduciary duties  
13 to its shareholders. On May 12, 2000, the exact same day that the merger agreement between  
14 Teledesic and ITGL was signed and approved by both boards, Teledesic loaned ITGL \$200  
15 million. This loan and its terms are remarkably unfavorable to Teledesic. The loan's purpose  
16 was to fund Mr. McCaw's New ICO-ITGL investments without providing appropriate  
17 compensation to Teledesic shareholders.  
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25 **b. Terms of the Loan.** The terms of the Teledesic \$200 million loan to  
26 ITGL are summarized as follows:<sup>11</sup>  
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- 28 • On May 12, 2000 Teledesic loaned \$200,000,000 to ITGL;
- 29 • Loan bears interest at LIBOR<sup>12</sup> plus 4.5% for the first six months and LIBOR  
30 plus 6% thereafter;
- 31 • Loan matures on August 1, 2001;
- 32 • If ITGL or one of its subsidiaries merges with Teledesic by the maturity date,  
33 the loan and any unpaid accrued interest will be repaid in cash on the maturity  
34 date;
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44 <sup>11</sup> The complete loan document is contained in the S4 at pp. 549 - 64.  
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46 <sup>12</sup> London Interbank Offered Rate – the rate the most creditworthy international banks dealing  
47 in Eurodollars charge each other for large loans.

- If the companies do not merge, Teledesic has the option to receive either Class A common stock of ITGL or quarterly cash payments over ten years commencing January 1, 2002;
- The loan is “subordinated to the holders of ITGL's senior debt instruments.”

S-4 at 194.

c. **Ten-Year Pay Back Period Extraordinary.** The fact that Teledesic would make any loan at all is suspect. Teledesic is a development stage company. Since Teledesic’s inception its officers have stated publicly on countless occasions that the company would be engaged in capital raising efforts for the foreseeable future in support of its own capital intensive business plan. That Teledesic would loan funds with a ten-year payback period is unthinkable in this dynamic industry.

The terms of the loan prove conclusively that Mr. McCaw has used Teledesic’s assets for his own interests. The only way in which the loan is to be paid back in the near term, in cash, in full is if all the conditions in the merger agreement are met or waived and the merger becomes effective.

Now that the merger has been abandoned, Teledesic’s outstanding funds due from ITGL are to be converted either to ITGL stock at the rate of \$10.00 per share or are repaid in quarterly installments over a 10-year period. Neither ITGL stock nor repayment over a 10-year period (assuming ITGL is sufficiently creditworthy to meet its payment obligations) is of any use to a development stage company like Teledesic. The decision to make the loan under these terms funded Mr. McCaw’s ambitions, left Teledesic in a significantly weakened state, increased its vulnerability to further McCaw manipulations, and substantially reduced the value - both present and future - of Teledesic. Neither Mr. McCaw, Eagle River nor any of the other beneficiaries of this loan guaranteed this obligation.

1                   d.     **Interest Rate Far Lower Than Cost of Capital.** According to Lehman  
2 Brothers (S-4 at 67) and Jefferies and Company (S-4 at 49) Teledesic's cost of capital ranges  
3 from 25% to 40%. The Teledesic board decision to lend out \$200 million costing 25%-40%  
4 interest for a 10% return, especially to a high-risk creditor such as ITGL is further indication of  
5 their loyalty to Mr. McCaw and his other interests at the expense of Teledesic's minority and  
6 other shareholders.  
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12                   e.     **Inadequate Security.** As a practical matter, the loan is unsecured. It is  
13 expressly made subordinate "to the holders of ITGL's senior debt instruments." Too, the  
14 ability to repay the loan by ITGL is in substantial question. While referenced nowhere in the  
15 S-4, the defendants have now told the FCC that, absent permission to use the ICO radio  
16 spectrum to provide terrestrial cellular phone and data services (for free), the ICO plan will be  
17 worthless. In a March 8, 2001, letter to Chairman Michael K. Powell of the Federal  
18 Communications Commission, New ICO stated as follows:  
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- 26                   •     "But perhaps the most important benefit of the ATC [Ancillary  
27 Terrestrial Component] concept is that it will allow the 2 GHz MSS  
28 [Mobile Satellite Service] service itself, with all of its attendant  
29 public interest benefits, to become a viable enterprise."
- 30                   •     "Without this [ATC], MSS service will disappear, not just for those  
31 who have other options, but also for those who do not."  
32
- 33                   •     "Without the ability to serve indoor and urban subscribers, however,  
34 2 GHz MSS operators [New ICO] will be unable to attract the  
35 billions of dollars necessary to build and launch their systems"<sup>13</sup>  
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46                   <sup>13</sup> In New ICO's situation, the \$1.2 billion in funding provided in the bankruptcy restructuring  
47 was represented to the bankruptcy court by Mr. McCaw to be sufficient capital to deploy the New ICO  
system and to initiate service.

- “Without ATC, 2 GHz MSS systems are simply not economically viable. With capital markets essentially closed to MSS operators, neither New ICO nor other 2 GHz proponents can afford to wait.”

Id. at 2, 6, 11, and 16 (emphasis supplied). Teledesic’s \$200 million loan was made to an entity whose only asset had no viability absent additional controversial and yet-to-be obtained privileges from the FCC. This risk is not identified in the S-4 nor, based on the descriptions of the relative valuation process of the New ICO and Teledesic shares described therein, accounted for in the merger consideration or restatement by the Teledesic board of directors of the fair market value of Teledesic Common stock.

f. **Director Vote Unanimous.** The \$200 million loan was unanimously approved by those Teledesic directors present at the board meeting on May 12, 2000: Weibling, Daggatt, Hooper, Alberg, Owens, Tuck, Severns, and Bane. The loan was approved notwithstanding the fact that an independent advisory committee of the board—created to review the merger itself—expressly opined that it had not considered the loan to be within its mandate from the board. The loan was funded immediately thereafter, for the purposes outlined in the ¶ 3.5.h. below. All Teledesic directors voting in favor of the loan to ITGL stood on both sides of this transaction by virtue of the conflicts outlined above. A summary of the May 12, 2000 voting is as follows:

**May 12, 2000 Board Meeting Voting Record**

<b>Member</b>	<b>Attendance</b>	<b>Merger Vote</b>	<b>\$200 Million Loan</b>
Craig McCaw	Absent	-	-
William Owens	<b>Present</b>	<b>For</b>	<b>For</b>
Russ Daggatt	<b>Present</b>	<b>For</b>	<b>For</b>
Dennis Weibling	<b>Present</b>	Abstain	Abstain
Steve Hooper	<b>Present</b>	<b>For</b>	<b>For</b>
Tom Alberg	<b>Present</b>	<b>For</b>	<b>For</b>
Michael Larson	Absent	-	-
Keith Bane	<b>Present</b>	<b>For</b>	<b>For</b>
Richard Severns	<b>Present</b>	<b>For</b>	<b>For</b>
Ed Tuck	<b>Present</b>	<b>For</b>	<b>For</b>

g. **Violation of Cash Management Guidelines.** The terms of this loan— as well as the credit worthiness of the borrower—is a clear violation of Teledesic’s Cash Management Guidelines and Priorities. This transaction makes no economic sense whatsoever for Teledesic.

h. **Time of the Essence.** It was imperative to Mr. McCaw and Eagle River that the Teledesic board approve the \$200 million loan. The Binding Agreement to take ICO out of bankruptcy required \$700 million to be invested by May 17. (See S-4 at 185.) Of that \$700 million, ITGL needed to provide \$577 million. To protect their conflicted ITGL, New ICO and other interests the Teledesic directors, “determined that the \$200 million loan by

1 Teledesic LLC to ITGL would facilitate the speedy completion of the New ICO financing.” S-  
 2  
 3 4 at 61. But for Teledesic’s loan, ITGL had on hand slightly less than \$380 million,  
 4  
 5 approximately \$199 million less than necessary to meet its funding obligation. A summary of  
 6  
 7 ITGL’s sources and uses of cash is as follows:  
 8  
 9

<b>ITGL Sources and Uses of Cash</b>					
<i>From Inception to July 31, 2000</i>					
<i>assembled from information contained in the S-4 dated September 20, 2000</i>					
Date	Description	Source	Use	Balance	S-4 Ref.
February 9, 2000	ITGL Incorporated.	\$0	\$0	\$0	41, 58
February 29, 2000	Eagle River pledges Nextel shares in exchange for ITGL shares. <i>Figure shown reflects cash received as part of hedge initiated with Chase Manhattan bank, actual amount credited to Eagle River for investment may differ due to accrual of tax liabilities.</i>	\$351,600,000		\$351,600,000	192, 194 & 195
May 1, 2000	Eagle River cash contribution.	\$109,200,000		\$460,800,000	195
May 1, 2000	Burlington Resources Investment	\$20,000,000		\$480,800,000	195
May 1, 2000	Chandra Investment ( <i>1st tranche</i> ).	\$22,500,000		\$503,300,000	195
March 3, 2000	Bankruptcy court approved Old ICO's plan of reorganization effective May 17, 2000. <i>\$122.9 million in financing was raised from outside investors and \$577.1 million required from ITGL.</i>	-	-	-	-
May 12, 2000	Teledesic Board Approves merger and ITGL loan.	-	-	-	-
May 12, 2000	Teledesic Loan to ITGL.	\$200,000,000		\$703,300,000	75
Between February 19, 2000 and May 16, 2000	Advances to New ICO under Debtor in Possession agreement.		(\$275,000,000)	\$428,300,000	185

1		Certain Eagle River				
2		Affiliates agree to loan up to				
3	May 15, 2000	\$190,499,637 to ITGL,	\$150,500,000		\$578,800,000	75, 193-94
4		\$150,500,000 is actually				
5		used.				
6		ITGL exit funding				
7	May 17, 2000	requirement of Binding		(\$577,100,000)	\$1,700,000	185
8		Agreement.				
9		Chandra Investment (2nd				
10	July 3, 2000	tranche).	\$22,500,000		\$24,200,000	195
11		CDR Satco Investment.	\$150,000,000		\$174,200,000	204
12	July 1, 2000	Lomantor Holdings.	\$53,000,000		\$227,200,000	205
13		Cascade Investments LLC.	\$100,000,000		\$327,200,000	205
14	July 1, 2000	Eagle River affiliate loan				
15	July 31, 2000	repaid.		(\$150,500,000)	\$176,700,000	193-94
16						
17						

18 See S-4 at 91 for summary of investing activities from ITGL's inception through June 30, 2000

19 All these facts were known to all members of the Teledesic board.

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21  
22  
23 i. **Mr. McCaw Pays Himself Back, But Not Teledesic.** Page 75 of the S-  
24  
25 4 contains this oblique reference:

26  
27 On May 15, 2000, certain affiliates of Eagle River Investments, LLC  
28 loaned to ITGL \$190,499,637. As of the date of this document  
29 [September 20, 2000], these loans have been paid in full.

30  
31 (emphasis added). ITGL had the wherewithal to repay Teledesic. The Eagle River affiliates'  
32 loan was, instead, repaid in July 2000. S-4 at 193-94. ITGL did not have the ability to repay  
33 both Eagle River affiliates and Teledesic. Mr. McCaw exercised his control over the Teledesic  
34 board to ensure his loan was repaid without objection from Teledesic.  
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40 j. **Terms Given Other Investors—Contributing Less Money—Are Far**  
41  
42 **More Favorable.** The folly of the Teledesic loan is demonstrated by terms given essentially  
43 every other ITGL investor. In each case, investors contributed far less than \$200 million and  
44 received far better terms:  
45  
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47

- One investor put in \$53 Million (26.5% of the value of the Teledesic loan) and received shares at the same price as Teledesic is entitled to under the loan agreement PLUS the option to purchase another 5.3 million shares at prices ranging from \$12.00 to \$13.20 per share PLUS other incentives for additional investments.
- Cascade Investments LLC<sup>14</sup> invested \$100 Million (50% of the value of the Teledesic loan) and received stock at the same price as Teledesic is entitled to PLUS options to purchase an additional 5,341,768 shares of stock at \$12.50 per share. The value of these options using the Black-Scholes option pricing model with Jefferies and Company's factors (S-4 page 50) is \$32,798,406. In addition Cascade LLC received certain registration and indemnification rights (S-4 page 76).
- CDR-Satco LLC purchased \$150 Million (75% of the value of the Teledesic loan) of ITGL stock at the same price as Teledesic PLUS options to purchase 3,250,000 additional shares at \$12.50 per share.

S-4 at 194-95 and 204-05. Teledesic contributed more money to ITGL than all of these entities and received less consideration. Mr. McCaw exploited his control of Teledesic to direct Teledesic's cash towards his other interests.

**k. Compare Teledesic's Terms to Mr. McCaw's.** The following table clearly illustrates the dichotomy between the risk/reward ratio bargained for by Mr. McCaw personally and the risk/reward ratio to which he has subjected the Teledesic shareholders. Mr. McCaw initially invested \$95.5 million in the first tranche of the bankruptcy reorganization of New ICO. Mr. McCaw's downside was protected by insisting that his debt is senior to virtually all other debt, interest repayment is in cash at the end of the term, and Mr. McCaw rewards himself with options valued at \$350,000,000. Teledesic's debt, on the other hand, is

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<sup>14</sup> Cascade LLC is an investment company established to manage Mr. William Gates' personal assets. Cascade LLC, in turn, is managed by Mr. Michael Larson, Teledesic Director. Mr. Gates is an investor in Teledesic and indirectly through Microsoft in Nextel. Cascade LLC is an investor in ITGL. Mr. Larson is responsible for Teledesic's cash management.

1 virtually last in seniority, gets repaid over a period of 10 years, and comes without the upside  
 2 options that generously reward Mr. McCaw:  
 3  
 4

5 **Loan Term Comparison:**  
 6 **McCaw's Debtor-in Possession Financing for ICO and Teledesic's Loan to ITGL**

	<b>First Tranche ICO Debtor-In-Possession Financing<sup>15</sup></b>	<b>Teledesic Loan to ITGL</b>
<b>Amount</b>	\$95.5 million	\$200 million
<b>Loan Date</b>	October 31, 1999	May 12, 2000
<b>Term</b>	June 15, 2000	August 1 2001
<b>Interest</b>	LIBOR +5.25%	LIBOR plus 4.5% first six months, LIBOR plus 6% thereafter
<b>Seniority</b>	Senior to all debts except \$1.5 million	<u>Subordinated</u> to Senior Debt
<b>Collateral</b>	\$2.6 Billion in book value of assets	<u>Unknown</u>
<b>Conversion</b>	New ICO shares at \$4.50 per share <sup>16</sup>	Automatic to ITGL shares at \$10.00 share
<b>Principal Payment</b>	In Cash in the event ICO was unable to exit bankruptcy – otherwise converted to New-ICO shares at a discount as stated above <sup>17</sup>	<u>Over 10 years</u> ; otherwise loan is converted as above
<b>Interest Payment</b>	In cash	Accrued and added to amount converted as specified above
<b>Other Consideration</b>	56 million options to purchase additional shares in New-ICO (Options valued at \$350 million)	None

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41 <sup>15</sup> S4 pp 220 - 21

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43 <sup>16</sup> Share price reflects more than a 50% discount to pre-negotiated share pricing for follow-on investments.

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46  
47 <sup>17</sup> Conversion of Tranche I shares into New ICO shares at exit of bankruptcy financing was not a requirement of the WP's original ICO financing plan.

1                   **l. Loan Drained Teledesic Cash Resources.** At the time the loan was  
2 made, \$200 million was approximately 67 percent<sup>18</sup> of Teledesic’s resources. Teledesic now  
3 has less than \$100 million in capital. The loan has stripped Teledesic of its ability to pursue its  
4 own corporate goals and direct its own future. Teledesic’s “independent” advisory committee,  
5 in discussing potential direct investment in the old-ICO bankruptcy financing, highlighted  
6 Teledesic’s difficulty raising additional funds in the prevailing market conditions. S-4 at 59,  
7 63. The committee’s concern about fundraising in the existing financial climate further  
8 highlights the unreasonableness of this risky investment of approximately 67% of Teledesic’s  
9 cash on hand. Teledesic’s weakened financial condition has resulted in significant layoffs  
10 (over 40% of the staff), listing of the headquarters building for lease and publicly-announced  
11 intentions to move to smaller accommodations to conserve resources.

12                   **m. Critical Information Regarding Creditworthiness Deliberately**  
13 **Withheld.** Mr. McCaw had critical information available to him that should have been  
14 disclosed and considered by Teledesic in its decision making concerning the \$200 million  
15 Teledesic loan to ITGL. This information included the vulnerability of the ICO system to radio  
16 frequency interference and the worthlessness of the entire ITGL-New ICO venture absent the  
17 right to use ICO’s radio spectrum for terrestrial use. The following is a brief summary of the  
18 facts indicating the Mr. McCaw knew all along the flaws in the New ICO system and business  
19 plan that increased the riskiness of the \$200 million loan.

- 20 • Documents filed by Jefferies and Company in the ICO bankruptcy proceeding  
21 indicate that Eagle River and Teledesic officials raised concerns early in their  
22 discussions with Old ICO about interference issues associated with tropospheric  
23 radio and radar systems.

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<sup>18</sup> Based on information from the Consolidated Balance Sheets for Teledesic, S4 page 249

- 1 • Anyone familiar with international radio frequency planning issues would be aware  
2 of significant interference in the frequency bands proposed for use by New ICO.  
3  
4 • Teledesic had individuals familiar with international radio frequency planning and  
5 analysis on staff at all times in question.  
6  
7  
8 • On May 12, 2000, Teledesic's board of directors voted to approve the merger  
9 agreement between Teledesic and New ICO without the consideration and  
10 disclosure of the vulnerabilities outlined herein.  
11  
12 • On the same day as the merger vote, May 12, 2000, Teledesic's board of directors  
13 decided to grant a \$200 million, unsecured loan to an entity with no track record and  
14 whose predominant asset would be an ownership interest in New ICO without the  
15 consideration and disclosure of the vulnerabilities outlined herein.  
16  
17  
18 • Nowhere in the S-4 document filed on September 20, 2000 is there any suggestion  
19 that the ability to utilize New ICO's radio frequencies terrestrially was crucial to the  
20 viability of the business plan being proposed.  
21  
22  
23 • On March 8, 2001, New ICO<sup>19</sup> sent a letter to the Chairman of the FCC stating that  
24 if it was not permitted to use its frequencies terrestrially, New ICO would not be  
25 viable and that mobile satellite services would disappear.  
26  
27 • A June 1, 2000, eCompany Article entitled "Is Teledesic Grounded?" contains the  
28 following quotes regarding the New ICO spectrum request to the FCC:

29  
30 "This is not a backdoor way to circumvent the spectrum auction," insists  
31 Gerry Salemme<sup>20</sup>, senior vice president at New ICO, citing the high costs  
32 of developing satellite service. Instead, Salemme says, New ICO is  
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39 <sup>19</sup> Despite the fact that the letter in question came from New ICO, it was signed by two  
40 Teledesic employees: Mr. Larry Williams and Ms. Suzanne Hutchings. The accompanying technical  
41 analysis was signed by another Teledesic employee, Dr. José Albuquerque. Further indications of Mr.  
42 McCaw's use of Teledesic resources to further his other interests.  
43

44 <sup>20</sup> Mr. Salemme is listed as a senior vice president of Teledesic in documents filed in February  
45 2001 with the Secretary of State for Washington. However, he is not mentioned anywhere in the  
46 executive section of the Teledesic website nor the New ICO website. Mr. Salemme also holds executive  
47 positions with XO, Nextel and New ICO.

1 asking that the FCC not "tie our hands with rules that are so satellite-  
2 specific that we don't have the flexibility to put together a business."  
3

4 The dramatic change in Mr. McCaw's statements regarding the value of New ICO prior to his  
5 receiving the \$200 million loan from Teledesic and his March 2001 letter to the FCC  
6 demonstrate that Mr. McCaw never had any interest in making a viable space-based business  
7 out of New ICO and instead was planning all along to use other people's money and New ICO  
8 and its frequencies as a "Trojan Horse" to secure access to terrestrial use of radio spectrum to  
9 provide cellular phone service. This is the same type of spectrum for which cellular carriers  
10 have paid many billions of dollars to use.  
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17  
18 **n. Mr. McCaw Manipulates Opinions of Merrill Lynch and Lehman**  
19

20 **Brothers.** The Teledesic loan to ITGL is suspect in that one party, Mr. McCaw, controlled all  
21 of the assets of the corporations on all sides of the transaction and therefore all of the  
22 management and all of the information provided for the Lehman Brothers opinion. This  
23 information was critical to evaluating the creditworthiness of ITGL as a Teledesic debtor.  
24  
25  
26

27  
28 Two consultants were retained to provide an opinion regarding the asset values of the  
29 entities involved in the Teledesic, ITGL, and New ICO loan transaction. The opinions of  
30 Jeffries and Company (S-4 at 46-51) and Lehman Brothers (S-4 at 64-70) demonstrate that both  
31 analyses relied solely on the financial model provided to these firms by the companies. For  
32 example:  
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34  
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37

38 "In its review and analysis, and in arriving at its opinion, Jefferies &  
39 Company assumed and relied upon the accuracy and completeness of all  
40 of the financial and other information provided to it including, without  
41 limitation, information furnished to it orally or otherwise discussed with  
42 it by the management of ITGL, New ICO and Teledesic, as well as  
43 publicly available information. Jefferies & Company did not assume any  
44 responsibility for independent investigation or verification of any of this  
45 information. Jefferies & Company relied upon the assurances of  
46  
47

1                    management of each of ITGL, New ICO and Teledesic that they were  
2                    not aware of any facts that would make this information inaccurate or  
3                    misleading.”  
4

5 S-4 at 47-48 (emphasis supplied). Lehman Brothers makes a similar disclaimer. S-4 at 66.  
6

7                    Despite the fact that Merrill Lynch was an acknowledged expert in the satellite  
8                    telecommunications industry and had been Teledesic’s financial advisor since 1995, ITGL  
9                    retained Merrill Lynch<sup>21</sup> to represent itself in the transaction and Lehman Brothers, far less  
10                    experienced in the area of satellite telecommunications, was chosen to advise Teledesic.  
11                    Lehman Brothers began their efforts for Teledesic on April 6, 2000 and delivered an opinion  
12                    approximately 6 weeks later on May 12, 2000. The opinion was later updated on August 15,  
13                    2000 to reflect a procedural change in the merger. For these limited efforts, Teledesic paid  
14                    Lehman Brothers a fee of \$2 million. S-4 at 70. It is important to note that Lehman Brothers  
15                    was paid a fee to provide an opinion only. No other investment banking services were  
16                    provided.  
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27                    In contrast, Jefferies and Company provided ICO and its creditors with complete  
28                    investment banking services from September 17, 1999 through June 17 2000. For these 9  
29                    months of effort comprising almost 4,000 hours of professional billing, Jefferies and Company  
30                    was paid only \$1 million (plus expenses)<sup>22</sup>. Jefferies and Company’s actual fee for its  
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39                    <sup>21</sup> According documents filed with the US Bankruptcy Court for the District of Delaware, Cause  
40                    No. 99-2933 (MFW) Eagle River and ITGL granted Merrill Lynch the right to act as the exclusive  
41                    placement agent for certain private placements of capital stock and to be the sole global coordinator for  
42                    ITGL’s initial public equity offering.  
43

44                    <sup>22</sup> Jefferies and Company, Application of Final Allowance for Compensation for Service  
45                    Rendered and Reimbursement of Expenses as Financial Advisor to the Official Committee of Unsecured  
46                    Creditors for the period from September 17, 1999 [sic] through June 17, 2000, Filed July 12, 2000, US  
47                    Bankruptcy Court for the District of Delaware, Cause No. 99-2936 (MFW)

1 subsequent engagement by New ICO to provide a similar fairness opinion was not disclosed in  
2  
3 the S-4. The fact that the fee was not disclosed and therefore not material, along with the  
4  
5 significant discrepancies between the effort expended and fees received casts further doubt on  
6  
7 both the independence and the accuracy of the Lehman Brothers opinion.  
8

9 **3.6 Personal Use of Teledesic Resources by the Defendants.**

10  
11 **a. Teledesic and ITGL Viewed as One Entity to Outside Observer.**

12 Mr. McCaw created ITGL as part of his scheme to divert resources from Teledesic and  
13  
14 leverage his own control and ownership in New ICO. In this instance ITGL relied, on a day-to-  
15  
16 day basis, almost exclusively on Teledesic's regulatory, government relations, public relations,  
17  
18 business planning, financial analysis and technical expertise. ITGL used Teledesic's  
19  
20 intellectual property and counted heavily on Teledesic's globally recognized name in the  
21  
22 satellite communications field to establish credibility for Mr. McCaw's New ICO scheme and  
23  
24 merger plans. To any observer, ITGL and the Teledesic organization are one in the same.  
25  
26 ITGL was led by Mr. Daggatt, Teledesic's then Vice Chairman (and former President). A  
27  
28 secret agreement later revealed in the S-4<sup>23</sup> was negotiated between Mr. Daggatt and Eagle  
29  
30 River, providing lucrative incentives to Mr. Daggatt to exploit Teledesic resources and ignore  
31  
32 relevant facts concerning the ICO system performance and frequency interference issues. In  
33  
34 short, the agreement created a misalignment of Mr. Daggatt's economic interests with those of  
35  
36 Teledesic. If not for Mr. McCaw's desire to utilize Teledesic resources without adequate  
37  
38 recognition or compensation, Teledesic and ITGL would never have been formed.  
39

40  
41 **b. Mr. McCaw Keeps Millions in Lucrative Options For Himself.** The

42  
43 ITGL structure provided a mechanism for Mr. McCaw to divert to himself and at least one  
44

45  
46  
47 \_\_\_\_\_  
23 The complete Daggatt-Eagle River agreement is contained in the S4, pp 490-3

1 other Teledesic shareholder hundreds of millions of dollars that would have otherwise belonged  
2  
3 to all Teledesic shareholders. In conjunction with the New ICO transaction, Mr. McCaw  
4  
5 received options to purchase 56 million additional shares of New ICO stock. The value of  
6  
7 these options is approximately \$350 million<sup>24</sup>, as follows:  
8

9  
10 **Value the Options Mr. McCaw Received as**  
11 **Part of the ICO Debtor-in-Possession Financing**

<b>Option</b>	<b>Per Share Value</b>	<b>Total</b>
16 million shares at \$10.45 per share	\$6.48	\$103,680,000
40 million shares at \$12.5 per share	\$6.14	\$245,600,000
	<b>Total:</b>	\$349,280,000

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25 Because Mr. McCaw ignored his fiduciary duties to Teledesic and created the ITGL  
26  
27 organization to further leverage his control over the ICO bankruptcy proceeding and the ITGL,  
28  
29 New ICO, Teledesic merger, the value of a significant portion of these options was taken from  
30  
31 Teledesic. As a result, approximately \$200 million in value from the options received by Mr.  
32  
33 McCaw in the ICO financing belongs to Teledesic shareholders other than Mr. McCaw.

34  
35 **c. Teledesic Resources at Mr. McCaw's Disposal.** Beginning in fall of  
36  
37 1999 Teledesic resources were deployed at the discretion of Mr. McCaw and Eagle River to  
38  
39 evaluate the feasibility of several failing satellite communications systems, including Iridium  
40  
41 and ICO, for the benefit of Mr. McCaw. Mr. Daggatt, Teledesic's former President and then  
42  
43  
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46  
47 <sup>24</sup> The options are valued using a Black-Scholes option price calculation employing the same  
volatility and interest factors as Jefferies and Company used in their analysis of New ICO. See S4 at 50.

1 Vice Chairman led the efforts focusing on the take over of the then-bankrupt ICO organization.  
2  
3 From the beginning of Mr. McCaw’s pursuit of these other satellite communications  
4  
5 companies, through the present, substantial Teledesic resources have been dedicated to these  
6  
7 endeavors. Even the S-4, as it discusses the background and history of the merger, notes

8  
9 Teledesic’s early involvement:

- 10
- 11 • “Eagle River Investments, LLC, an entity controlled by Mr. McCaw, with  
12 the assistance of Teledesic, then undertook a review and analysis of Old  
13 ICO, its business plan, assets and potential opportunities.” Id. at 40.  
14
  - 15 • “In October 1999, Teledesic became involved in the discussions between  
16 Eagle River and Old ICO in order to further explore these possible synergies  
17 and to provide technical and management expertise to Mr. McCaw and to  
18 Eagle River with respect to evaluating the business and assets of Old ICO.”  
19 Id. at 56.  
20
  - 21 • “... Teledesic's efforts to date on Eagle River's behalf in connection with the  
22 binding letter agreement and credit agreement including technical, business  
23 and legal reviews of Old ICO and participation in discussions with Old  
24 ICO.” Id. at 58.  
25  
26

27  
28 Teledesic’s own website, [www.teledesic.com](http://www.teledesic.com), reinforces Teledesic’s efforts from the  
29  
30 beginning. The following is an excerpt from the “FAQs About New ICO and Teledesic:”

31  
32 Once Craig McCaw announced plans to invest in ICO on November 1,  
33 1999, Teledesic representatives worked closely with ICO and its  
34 industrial partners Hughes Space and Communications, Hughes Network  
35 Systems, NEC and Ericsson to upgrade large portions of the New ICO  
36 ground network . . . .  
37

38  
39 The title of a February 4, 2000 Press Release on the Teledesic website further reinforces  
40  
41 Teledesic’s involvement in the ICO efforts:

42  
43 “Eagle River and Teledesic Complete Due Diligence of ICO; Second  
44 Funding Round Moves Forward”  
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1 Teledesic was included as a party to the original Binding Letter Agreement dated  
2  
3 October 31, 1999 sent to ICO in care of Wasserstein Perella and Company. Paragraph 1 of the  
4  
5 letter states the following:

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7 “This letter sets forth the terms pursuant to which a major investment in  
8  
9 ICO will be made by Eagle River Investments LLC, Teledesic LLC, or  
10  
11 another entity affiliated with Craig O. McCaw (individually or  
12  
13 collectively referred to as “*Investor*”)

14 **d. Teledesic Is Promised It Will Be Compensated.** Beginning in late  
15  
16 summer of 1999, when Teledesic resources were first deployed to evaluate the Iridium and ICO  
17  
18 opportunities, there were consistent promises made to Teledesic’s employee/shareholders that  
19  
20 Teledesic would be either leading or participating in any subsequent transaction. The S-4  
21  
22 supports these allegations:

23 “From October 31, 1999 through February 9, 2000, Eagle River pursued  
24  
25 a number of alternatives for structuring the operations and ownership of  
26  
27 New ICO, including the possibility of assigning all or a portion of its  
28  
29 position under the definitive agreement to Teledesic.” S-4. at 41.

30 A number of officers stated in public forums that Teledesic would receive adequate  
31  
32 compensation for its value creation efforts. In fact, right up to the May 2000 loan approval, the  
33  
34 Teledesic Board expected that Teledesic shareholders would receive some or all of the options  
35  
36 associated with the New ICO financing or otherwise be compensated for Teledesic’s  
37  
38 contribution.

39 To the contrary, nowhere in the S-4 is there any mention of the fact that Teledesic’s  
40  
41 efforts on behalf of Mr. McCaw and the ICO or ITGL transactions were taken into  
42  
43 consideration in the relative valuations and merger considerations. It certainly does not appear  
44  
45 in Jefferies and Company’s analysis (pp. 64-70), or in the Lehman Brothers analysis (pp. 46-  
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1 51). The value of the efforts provided by Teledesic for the benefit of Mr. McCaw and his  
2  
3 designees is estimated at \$100 million.

4  
5 **e. Tangible Costs to Teledesic Shareholders.** Mr. McCaw saw fit to  
6  
7 reimburse Teledesic for the services of Mr. Daggatt.<sup>25</sup> However, the dedication of the majority  
8  
9 of the entire Teledesic's organization to Mr. McCaw's efforts continued without  
10  
11 reimbursement.

12  
13 These efforts have significant tangible (cash) and intangible (opportunity) costs to  
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15 Teledesic shareholders. Teledesic's deployment of resources on Mr. McCaw's behalf began in  
16  
17 the fall of 1999. As of the date hereof, over 24 months have transpired. According to the  
18  
19 Consolidated Statement of Operations for Teledesic Corporation, S-4 at 250, the total operating  
20  
21 expenses for Teledesic for the 6 months ended June 2000 was \$27,559,000. Presumably  
22  
23 Teledesic's operating expenses for the 24 months it was primarily focused on serving Mr.  
24  
25 McCaw's interests is considerably higher. While Teledesic is not in the business of providing  
26  
27 professional services, it is reasonable to assume that if it were, it would offer those services at a  
28  
29 price structure that would yield some profit over and above expenses. Accounting for even a  
30  
31 modest profit margin on the operational costs incurred over the past 24 months raises to  
32  
33 approximately \$100 million the value of Teledesic's efforts that was extracted from the  
34  
35 Teledesic shareholders by Mr. McCaw.

36  
37 **f. Intangible Costs to Teledesic Shareholders.** The fact that for the past  
38  
39 24 months or more the majority of the Teledesic organization and its resources, both financial  
40  
41 and intellectual, have been focused on the pursuit of Mr. McCaw's interests with Iridium, ICO

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46 <sup>25</sup> "ITGL reimburses Teledesic for the salary paid by Teledesic to Mr. Daggatt. Mr. Daggatt is  
47 vice chairman of Teledesic, vice chairman of ITGL, the former chief executive officer of ITGL and the  
acting chief executive officer of New ICO." S4, at 74.

1 and elsewhere, has caused significant harm to the Teledesic organization and come at a  
2 significant cost to Teledesic shareholders who were not otherwise on both sides of these  
3 transactions or rewarded in side deals. Prior to being directed to work on projects other than  
4 the design, development and deployment of the Teledesic system, the Teledesic team was a  
5 fully-staffed, dynamic organization with world renown and expertise in several areas of  
6 wireless and satellite communications. Handpicking this team took years of effort and came at  
7 substantial financial expense to Teledesic.  
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10  
11 Today, the team is a shadow of its former self. Executive officers who sought to pursue  
12 the legitimate corporate goals of Teledesic have learned that the interests of Teledesic come  
13 second to those of Mr. McCaw and his related entities. Some have become deeply  
14 disillusioned; others have found it impossible to continuing serving while one by one the crown  
15 jewels of the corporation are spirited away to benefit other enterprises. Many personnel have  
16 voluntarily departed and over 50 personnel have been fired in two organized layoffs. The  
17 employees that remain are disenfranchised by the questionable directives issued by Mr. McCaw  
18 and his agents and morale at Teledesic is at an all time low.  
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22 In addition to the hollowing out of the once strong Teledesic organization, Mr.  
23 McCaw's directives have caused the company to lose significant credibility within the  
24 industrial community it relies on for the construction of its infrastructure and the international  
25 community needed to support its global licensing initiatives. Even if Teledesic were to once  
26 again aggressively pursue its stated mission to deploy a global broadband satellite  
27 communication system, it would face significant resistance by individuals and organizations  
28 who, based on Teledesic's conduct during the past 24 months, would give little credibility to  
29 Teledesic's claims and commitments.  
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1 During its 5 years of existence prior to Mr. McCaw's commandeering of the  
2 organization, Teledesic had assembled significant intellectual capital. This intellectual capital  
3 including business plans, industry forecasts, consulting reports, financial and network  
4 performance models have been applied to McCaw's ICO, Nextel, XO and Iridium efforts  
5 without any consideration being paid to Teledesic. As a result of the layoffs and  
6 disenfranchisement of the existing staff, much of this "corporate knowledge" which came at  
7 considerable cost and investment by Teledesic, has been either eroded or squandered.  
8 Teledesic's impressive pool of intellectual capital and worldwide reputation for technical  
9 expertise and cutting edge ideas in the field of satellite communications has been severely  
10 compromised. In addition, many of Teledesic's licenses to use the frequency spectrum in the  
11 U.S. and other places around the world include time limits by which Teledesic must begin to  
12 offer services. Mr. McCaw's 24-plus month diversion of Teledesic's pursuit of its original  
13 mission places many of these licenses in jeopardy.

14  
15 In sum, a once robust and highly regarded corporation with an ambitious business plan  
16 and substantial resources, both tangible and intangible, at its disposal has been looted by Mr.  
17 McCaw to create value in other entities that benefit Mr. McCaw, his affiliates and those who  
18 have the clout to get "a piece of the action." This has come at the expense of those small  
19 Teledesic shareholders and employees who don't have such clout and who now find themselves  
20 owners of an eviscerated corporation.

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g. **Use of the Trademarked Teledesic Name in ICO-Teledesic Global Limited Devalues Teledesic Brand and Violates International Trademark Laws.**

"Teledesic" is a registered trademark in the United States as well as many other countries around the world. This worldwide recognition and brand value has come as the result of years of effort on the part of Teledesic personnel accompanied by millions of dollars of investment.

1 S-4 at 256-57. Mr. McCaw has freely and deliberately incorporated the Teledesic name as part  
2 of ICO-Teledesic Global corporate logo and branding and in numerous public forums including  
3 press releases and websites. This use, without any apparent consideration to Teledesic, is both  
4 a violation of Teledesic's trademark rights and another example of Teledesic assets being  
5 commandeered for the personal use of Mr. McCaw. In addition, the continued public presence  
6 of "Teledesic" as part of the ICO-Teledesic Global name and image confuses the general public  
7 and business community alike. Two examples of this "brand confusion" are as follows: 1) a  
8 July 11, 2000 Puget Sound Business Journal article was entitled, "Teledesic Raises \$1 Billion"  
9 while the entire article was about ITGL and the \$1 Billion in funds raised by that entity. 2) A  
10 March 30, 2000 article by "Space.com" ([www.space.com](http://www.space.com)), a leading Internet periodical read by  
11 professionals in the satellite communication and aerospace industry, included a photograph of  
12 Mr. Greg Clarke captioned as the CEO of Teledesic. Mr. Clarke is the CEO of ITGL and has  
13 no executive relationship whatsoever to Teledesic. Mr. McCaw and Mr. Owens are, in fact, the  
14 co-CEOs of Teledesic. This dilution of Teledesic's brand image is even more problematic now  
15 that the merger has been abandoned.

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31 **h. Failure of Teledesic to Maintain Sufficient Pre-Merger**

32 **Consummation Independence and the Commingling of Assets.** Teledesic, when it has been  
33 convenient for Mr. McCaw and ITGL, has operated at the sole discretion and for the exclusive  
34 convenience of ITGL. This is particularly true with respect to the regulatory, financial  
35 planning, and government relations teams within Teledesic. One example of this misuse and  
36 intermingling of Teledesic assets appeared, until very recently, on the ICO website;  
37 [www.ico.com](http://www.ico.com). On the website Mr. Larry Williams, long-time Teledesic Vice President of  
38 Regulatory Affairs is listed as ICO, Vice President, International and Government affairs. His  
39 biography goes on to state that Mr. Williams, "serves in the same capacity for Teledesic LLC,  
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1 based in Washington DC, where he manages domestic and international government relations  
2 for the company.”  
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4  
5 Regulatory and government affairs are two areas in which Teledesic has demonstrated  
6 world-renowned competence and capability. These are areas of clear competitive advantage  
7 for Teledesic having devoted considerable financial and personnel resources to their  
8 development during the past 6 years of its existence. Now that the merger has been abandoned,  
9 Teledesic, New ICO and ITGL will have conflicting and competing regulatory policies and  
10 priorities. To the extent that Teledesic resources are supporting New ICO’s initiatives, without  
11 either adequate compensation or assurance of a future business combination, they are  
12 compromising Teledesic’s future value and ability to exist on a stand-alone basis. Given that  
13 many of Teledesic regulatory assets are decaying assets as a result of imposed deadlines and  
14 criteria for system and service deployment, allowing Teledesic’s regulatory and government  
15 affairs resources to pursue other interests erodes Teledesic’s value.  
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27 **i. Secret Agreement With Mr. Daggatt and Valuation of Teledesic**

28 **Shares.** In connection with the Mr. McCaw’s takeover bid for the bankrupt ICO, formation of  
29 ITGL, merger and loan negotiations with Teledesic, Mr. McCaw and Eagle River entered into a  
30 then secret agreement with Mr. Daggatt, former president and current Vice Chairman of  
31 Teledesic. The existence of this agreement became known only because of the requirement  
32 that it be disclosed as “material” in the documentation associated with the merger. On October  
33 31, 1999, Eagle River offered to purchase up to 1,000,000 shares of Mr. Daggatt’s Teledesic  
34 stock for \$18.50 per share in cash, of which 250,000 shares were immediately purchased. This  
35 valuation is in sharp contrast to the merger offer announced on May 12, 2000 to other Teledesic  
36 shareholders and the restatement of the fair market value of Teledesic stock by the board of  
37 directors. That offer was to exchange shares of Teledesic stock at \$8.25 per share for equally  
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1 illiquid shares in a newly-formed parent—a highly leveraged entity requiring significant  
2 additional capital to execute its business plan. A comparison of the two valuations is as  
3 follows:  
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5

	<b>Daggatt Agreement with Eagle River</b>	<b>Merger Consideration to Other Teledesic Corporation Shareholders</b>
<b>Class of Stock</b>	Class A Common	Class A Common
<b>Number of Shares</b>	Up to 1 million	Varies
<b>Share Price</b>	\$18.50	\$8.25
<b>Payment</b>	<u>Cash</u>	<u>Illiquid stock in another highly leveraged company</u> requiring huge amounts of additional capital
<b>Offer Date</b>	October 31, 1999	May 12, 2000

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This agreement provided Mr. Daggatt, who was then Vice Chairman at Teledesic, with incentives to utilize Teledesic assets to create value for Mr. McCaw in his ownership and control of the ICO assets. In doing so, Mr. Daggatt—supported almost exclusively by Teledesic personnel—enhanced ICO’s value and McCaw’s interests, while Teledesic’s resources were expended and its interests were ignored.

**j. Implications for the Future.** As a result of Mr. McCaw’s actions, Teledesic and its shareholders, particularly the small and employee shareholders lacking the standing to negotiate lucrative side-deals, have been cheated out of millions of dollars of cash and enterprise value.

Teledesic has been left in a severely weakened state, having had most of its assets and intellectual capital looted over the past 24 months in favor of Mr. McCaw’s other interests.

1                   k.     **McCaw's Efforts Constitute a Stealth Recapitalization of His**  
2  
3 **Interests.** Mr. McCaw's investigations regarding ICO were performed and supported almost  
4 entirely by Teledesic personnel and the Teledesic organization. To date, much of the Teledesic  
5 organization remains dedicated to the support of New ICO initiatives. Mr. McCaw used his  
6 control of the Teledesic board of directors and Teledesic resources to create a series of complex  
7 transactions designed exclusively to re-leverage his interests and control in Teledesic in a  
8 manner most advantageous to himself and a select group of Teledesic shareholders without  
9 providing compensation or adequate recognition of Teledesic's contributions to the New ICO  
10 efforts. In a nutshell, Mr. McCaw took the benefits and corporate opportunity that rightly  
11 belonged to all Teledesic shareholders and kept it for himself and those chosen by him.  
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21                   **3.7 Misappropriation of Corporate Opportunity: Teledesic Had the**  
22 **Financial Wherewithal to Lead the ICO Transaction.**  
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24                   a.     **Ignoring Teledesic's Efforts Enhances Mr. McCaw's Interests in**  
25 **Teledesic, ICO and ITGL.** Teledesic led the efforts to emerge ICO from bankruptcy. Mr.  
26 McCaw's ownership interest in New ICO and ITGL is significantly greater than it should be,  
27 because Teledesic's efforts were ignored.  
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32                   b.     **Teledesic's Cash Situation in Fall of 1999.** The following table  
33 illustrates Teledesic's cash position at the end of 1999.  
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37 <b>December 1999 Cash</b>	384,000,000	S-4 at 249
39 <b>Current liabilities</b>	(\$68,000,000)	S-4 at 249
40 <b><i>Net Cash</i></b>	<b><i>\$316,000,000</i></b>	

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43                   c.     **Additional Cash Available to Teledesic At the Time.** In addition to  
44 the cash on hand, significant additional cash was already committed to Teledesic.  
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<b>Net Cash On Hand</b>	\$316,000,000	
<b>Owed from Motorola</b>	\$50,000,000	S-4 at 97
<b>THL<sup>26</sup> Commitments</b>	363,350,000	S-4 at 263-264
<b>Total Funds Available</b>	<b>\$729,350,000</b>	

d. **Additional Non-McCaw Funds Bring Teledesic's Available Cash to Within \$100 Million of ICO's Total Cash Needs.** Cash committed to the New ICO bankruptcy effort from parties other than McCaw combined with Teledesic's resources was just \$100 million less than the total \$1.2 billion required to remove ICO from bankruptcy.

<b>Gates investment</b>	\$100,000,000
<b>CD&amp;R investment</b>	\$150,000,000
<b>Burlington investment</b>	20,000,000
<b>Chandra investment</b>	\$45,000,000
<b>Lamontor investment</b>	\$53,000,000
<i>Cash available</i>	<i>\$1,097,350,000</i>
<b>Total ICO financing need</b>	\$1,200,000,000
<i>Shortfall</i>	<i>(\$102,650,000)</i>

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<sup>26</sup> Cash commitments under this arrangement were made in June 1999 and subject to certain installment and time-limited redemption provisions. The party in question ultimately exercised its put provision on April 2000. Mr. McCaw utilized his influence and instructed certain Teledesic officers to undermine the party's financial commitment to Teledesic and instead, commit the funds in question directly to Mr. McCaw's ITGL efforts.

1                   e.       **Teledesic Pushed Aside in Favor of Mr. McCaw's Interests.**

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3       Teledesic clearly had the wherewithal to have led the entire ICO financing were not for Mr.  
4       McCaw's desire to re-leverage his interests in Teledesic, ITGL and New ICO. In addition,  
5       nothing in the original ICO bankruptcy restructuring proposed by WP demanded that a  
6       commitment to ICO's total \$1.2 billion in financing was required of the tranche I debtor-in-  
7       possession lenders. Teledesic readily had access to the \$95.5 million in funds ultimately  
8       provided to ICO by Eagle River under terms far more secure and far more favorable than  
9       Teledesic's \$200 million loan to ITGL. There was no preference for or perceived difference  
10       from ICO, WP, or the bankruptcy court of an effort led by any of the three parties – Eagle  
11       River LLC, Teledesic LLC, Mr. McCaw – mentioned in the October 31, 1999 Binding Letter  
12       Agreement sent to ICO by Eagle River.  
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15                   **3.8       Teledesic Incurs Accounting Charges From Certain Private**  
16                   **Arrangements of Mr. McCaw.**

17                   a.       **Introduction.** On at least two occasions, Mr. McCaw and Eagle River  
18       entered into private agreements with an unidentified executive, Mr. Daggatt, and possibly  
19       others. These agreements included provisions for Mr. McCaw or other related parties to  
20       purchase Teledesic stock at various prices from these individuals. Although these were private  
21       transactions between these individuals, they were deemed by the accountants to be corporate  
22       compensation arrangements. As a result, Teledesic incurred compensation charges of  
23       approximately \$12 million. These transactions between Mr. McCaw and related parties  
24       demonstrate complete disregard for the separate corporate entities that he controls, raise strong  
25       doubts about the undivided loyalty of these individuals to Teledesic while, at the same time  
26       utilizing Teledesic's corporate assets for Mr. McCaw's personal interests and those of certain  
27       shareholders. In addition, at least one of these transactions included provisions that resulted in  
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1 the deliberate misalignment of economic interests of a Teledesic Vice Chairman with the  
2 interest of Teledesic shareholders.  
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4           **b. Unidentified Executive’s Secret Agreement.** An unidentified  
5 executive had an employment agreement with Teledesic. That employment agreement was  
6 modified on December 31, 1997 to include a put-and-call arrangement. This put-and-call  
7 arrangement was then given to a third party. The unidentified executive eventually exercised  
8 the put. As a result, Teledesic was required to recognize a compensation expense of  
9 \$7,330,000. See S-4 at 266-67. While the corporation was forced to recognize the expense, it  
10 did not receive the benefit of the shares that were purchased in the put. That benefit went to  
11 that third party, who was able to purchase stock valued, at the time, at \$20 million, for \$10  
12 million.  
13

14           **c. Russ Daggatt’s Secret Agreement.** In October of 1999, Eagle River  
15 entered into an agreement with Mr. Daggatt, Teledesic’s Vice Chairman, as an incentive for  
16 Mr. Daggatt’s performance in furthering Mr. McCaw’s interests in the ICO and ITGL deals.  
17 This agreement provided cash purchase commitments for \$18.5 million of Mr. Daggatt’s  
18 Teledesic stock. The direct financial consequence of this transaction was that Teledesic  
19 incurred a \$4,600,000 compensation expense for something that clearly benefited another  
20 McCaw organization. Even Teledesic’s auditors, Arthur Anderson LLP, recognized this result.  
21 In their footnote, they state, “...as New ICO is the entity receiving the principal benefit...” Id.  
22 at 262-63.  
23

### 24 **3.9 Changes in Certain Shareholder Agreements.**

25           **a. Background On Proposed Teledesic-Nextel-Nextlink Merger.** In  
26 early 1999, Mr. McCaw and Eagle River began planning a business combination involving  
27 Nextel, XO (then called Nextlink) and Teledesic—three corporations under Mr. McCaw’s  
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1 control. This transaction as crafted would have enabled Mr. McCaw to exchange all of his  
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3 Teledesic stock worth millions of dollars for which there was not then, and is not today, a  
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5 public market, into instantly tradable stock in the combined entity. According to a Complaint  
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7 filed by another former officer of Teledesic:  
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9 Under the Newco scheme, McCaw and Gates' 41% Teledesic shares  
10 would be exchanged for stock in the publicly-traded Nextlink. The  
11 scheme worked to diminish the value of the remaining stock whose  
12 investors would be co-shareholders in a privately-owned company. And,  
13 without McCaw and Gates as shareholders, the value of Teledesic would  
14 be substantially less. Because of the bad publicity and likely lawsuits  
15 resulting from this diminution in value, Newco could not be created and  
16 the plan was shelved.  
17

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19 Shahriary v. Teledesic, L.L.C., et al., Superior Court of the State of California for the County  
20 of Los Angeles, Case No. B C233424, filed July 14, 2000, at ¶ 61 of Complaint for Damages  
21 (case transferred from California to Federal District Court, Western District on October 13,  
22 2000, Cause No. 00CV-1755). Despite all the promises of a commonality of interests, neither  
23 Mr. Montanaro nor (to his knowledge) any other Teledesic shareholder, other than Mr. Gates,  
24 was given the opportunity to exchange their shares. All remaining Teledesic shareholders  
25 would have retained their illiquid Teledesic stock and Teledesic would have become an entity  
26 wholly-owned and controlled by the combined Nextel/XO organization.  
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35 **b. Changes in Shareholder Agreements Survive Proposed Transaction.**  
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37 While the proposed Teledesic-Nextel-Nextlink transaction never occurred, certain preparations  
38 were completed. One such preparation was the modification of certain shareholder agreements  
39 and other documents giving Mr. Gates and Mr. McCaw the ability to exchange their shares in  
40 an arrangement independent of other shareholders. No consideration was given to Teledesic  
41 for these changes and this opportunity was not afforded any other Teledesic shareholder and  
42 the modifications remain in place today. Modification of the shareholder agreements in this  
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1 manner violates the commitments made to Teledesic employees regarding their shareholding  
2 status as compared to Mr. McCaw.  
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5 **3.10 Motorola Transaction.**  
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7 **a. Motorola Investment.** On May 21, 1998, a Teledesic Press Release  
8 announced an agreement between Motorola and Teledesic whereby Motorola would become  
9 the prime contractor for the Teledesic System and would make an investment in Teledesic.  
10

11 The press release characterized the investment as follows:  
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15 Motorola will receive a 26 percent stake in Teledesic for a combination  
16 of cash and the value of design and development work that will be  
17 redirected from Celestri<sup>27</sup> to the new joint effort. Motorola's total  
18 investment has a \$750 million valuation.  
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22 **b. \$450 Million in Intangible Assets—Teledesic Does Note Receive Fair**  
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24 **Value.** Of the \$750 million Motorola investment, \$300 million was to be paid in cash. The  
25 remaining \$450 million was, as described in the S-4 at page 256, the transfer of “certain  
26 intangible assets related to its Celestri project to the [Teledesic] Corporation, including system  
27 designs and certain trademarks and other intangible assets (collectively, Celestri Assets).” The  
28 value of the contributed assets by any measure was substantially below \$450 million. Mr.  
29 McCaw’s relationship and reliance on Motorola as the sole supplier of Nextel infrastructure  
30 along with the personal and intermingled relationship of the Motorola members of the  
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44 <sup>27</sup> Celestri was the name of a satellite communications system conceived by Motorola to offer  
45 similar services to Teledesic. Motorola has numerous and financially significant business arrangements  
46 with Nextel and many other McCaw affiliated entities. In 2000 Nextel paid \$2.65 billion for goods and  
47 services provided by Motorola. Mr. Bane, a Motorola executive, serves on both the Nextel and  
Teledesic Boards.

1 Teledesic board (Mr. Severns and Mr. Bane) with Mr. Weibling weighed heavily on the details  
2 of this overly generous arrangement with Motorola.  
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5 **c. Significant Write-Down of Assets Acquired in Motorola**

6 **Transaction.** To date, of the \$450 million worth of intangibles, “impairment losses of  
7 \$274,111 were recorded as of December 31, 1999.” (S-4, page 256) As Teledesic has  
8 terminated its agreement with Motorola, further impairment write-downs of all or a majority of  
9 these \$450 million assets will most likely occur.  
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12 **d. Uncollected \$50 Million Debt.** These write-downs aside, Motorola still  
13 owes Teledesic \$50 million. The S-4 addresses this issue:  
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15 Teledesic expects to receive the final \$50 million of Motorola's \$300  
16 million investment in two equal payments of \$25 million in September  
17 and October of this year [2000].  
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19 Id. at 97. No public information indicates this \$50 million debt has been paid—more  
20 than 11 months after the due date. Mr. McCaw’s reluctance to assert Teledesic’s claims to this  
21 money is influenced by his dependence on Motorola as the sole supplier of handsets and  
22 telecommunications infrastructure equipment to Nextel Corporation and by side deals made to  
23 induce the support of the Motorola directors on the Teledesic board of the \$200 million loan to  
24 ITGL along with his other manipulations of Teledesic resources.  
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27 **3.11 Teledesic Pays for Employees Working for Other McCaw Entities.**

28 **a. Nextel and XO Use of Teledesic Personnel, Resources and**  
29 **Confidential Materials.** Several Teledesic employees including Teledesic officers Mr. Tren  
30 Griffin, Mr. Doug Carter and Mr. R. Gerard Salemmé remained on the Teledesic payroll and/or  
31 receiving Teledesic benefits while providing services on a day-to-day basis to XO or other  
32 McCaw entities. Mr. Griffin, Mr. Carter and Mr. Salemmé were also listed as officers in the  
33 XO Annual Report.  
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1 In addition to being compensated by Teledesic, these employees along with others from  
2 Eagle River had, and continue to have, free access to Teledesic confidential information. They  
3 have in the past, and continue today, to be allowed to utilize and to direct Teledesic resources  
4 and assets to further the interests of Nextel, XO and other McCaw entities. In particular access  
5 to Teledesic confidential information including business plans, consulting reports, internal  
6 analyses and simulations was used freely and without compensation to Teledesic in the  
7 development of XO's data integration strategy and service offerings and Nextel's wireless  
8 Internet access offering.  
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17 **b. Employees Remain on Teledesic Payroll While Serving Other**  
18 **McCaw entities.** When convenient for Mr. McCaw, former Teledesic employees transferred  
19 to other positions at Eagle River, Nextel, XO, New ICO or ITGL remain on the Teledesic  
20 payroll. Teledesic continues to pay for these employees even though they have no day-to-day  
21 responsibilities or accountabilities to Teledesic nor are they ever expected to return to full time  
22 employment at Teledesic.  
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29 **3.12 Breaches of Fiduciary Duty Owed by Directors.** The transactions outlined  
30 above constitute multiple breaches of fiduciary duties by the defendants including, without  
31 limitation, the duty of loyalty and the requirement of good faith. See DGCL § 102(b)(7). To  
32 the extent—if any—that the transactions do not involve intentional acts by individual directors  
33 other than Mr. McCaw, those directors were at least grossly negligent in permitting such  
34 conduct to occur. As a result of the foregoing, Teledesic has been damaged.  
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41 **3.13 Breaches of Fiduciary Duty Owed by Controlling Shareholder.** Eagle River  
42 and/or Mr. McCaw owe fiduciary duties as controlling shareholders. As a result of the multiple  
43 breaches of fiduciary duty described above, Teledesic has been damaged.  
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#### IV. FOREIGN LAW

4.1 **Delaware Law.** Pursuant to CR 44.1, Mr. Montanaro seeks to have the law of Delaware applied as the substantive law in this case.

#### V. REQUIREMENTS FOR DERIVATIVE ACTIONS

5.1 **Ownership.** Mr. Montanaro was a shareholder of Teledesic Corporation at the time of all of the transactions described above.

5.2 **No Collusion.** This action is not a collusive one to confer jurisdiction on this court. King County Superior Court would have jurisdiction of this action in all events.

5.3 **Demand Futile.** Mr. Montanaro has made no demand on Teledesic Corporation. Given: (a) the breadth of the pattern of conduct alleged; (b) the amount at stake related to the acts alleged; (c) the defendants' multiple conflicts of interest; and (d) the relationship of other board members to Mr. McCaw, demand would certainly be futile.

#### VI. PRAYER FOR RELIEF

As a result of the foregoing, plaintiff prays for the following relief:

6.1 **Money Damages.** For money damages in an amount to be proved at trial.

6.2 **Injunctive Relief.** For injunctive relief, including restitution, as established at trial.

6.3 **Prejudgment Interest.** For prejudgment interest on all liquidated sums.

6.4 **Attorneys' Fees and Costs.** For plaintiff's attorneys' fees and costs.

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**6.5 Further Relief.** For such other relief as the Court deems just and equitable.

DATED this \_\_\_\_ day of September, 2001.

**GORDON MURRAY TILDEN**

By: \_\_\_\_\_  
Jeffrey I. Tilden, WSBA #12219  
Attorneys for Plaintiff