

Globalstar, Inc.
Form 10-K/A
May 11, 2009
Table of Contents

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, DC 20549

FORM 10-K/A

Amendment No. 2

x

**ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF
THE SECURITIES EXCHANGE ACT OF 1934**

For the fiscal year ended December 31, 2008

OR

o

**TRANSITION REPORT PURSUANT TO SECTION 13 OR
15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from to

Commission File Number 001-33117

GLOBALSTAR, INC.

(Exact name of Registrant as specified in its charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

41-2116508
(I.R.S. Employer
Identification No.)

Edgar Filing: Globalstar, Inc. - Form 10-K/A

461 South Milpitas Blvd.

Milpitas, California 95035

(Address of principal executive offices)

Registrant's telephone number, including area code: (408) 933-4000

Securities registered pursuant to Section 12(b) of the Act:

| Title of Each Class | Name of Each Exchange on Which Registered |
|---------------------------------|---|
| Common Stock, \$.0001 par value | The NASDAQ Global Select Stock Market |

Securities registered pursuant to Section 12(g) of the Act:

5.75% Convertible Senior Notes due 2028

Indicate by check mark if the Registrant is a well-known seasoned issuer as defined in Rule 405 of the Securities Act. Yes No

Indicate by check mark if the Registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes No

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

Indicate by check mark whether the Registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§ 229.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of Registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

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

Large accelerated filer

Accelerated filer

Edgar Filing: Globalstar, Inc. - Form 10-K/A

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

Smaller reporting company

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

The aggregate market value of the Registrant's common stock held by non-affiliates at June 30, 2008, the last business day of the Registrant's most recently completed second fiscal quarter, was approximately \$168.5 million.

The number of shares of the Registrant's common stock outstanding as of April 27, 2009 was 129,884,144.

Table of Contents

FORM 10-K/A

For the Fiscal Year Ended December 31, 2008

TABLE OF CONTENTS

| | Page |
|---|-------------|
| <u>Explanatory Note</u> | 2 |
| <u>Forward-Looking Statements</u> | 2 |
| <i>PART III</i> | |
| <u>Item 13. Certain Relationships and Related Transactions, and Director Independence</u> | 3 |
| <i>PART IV</i> | |
| <u>Item 15. Exhibits and Financial Statement Schedules</u> | 6 |
| <u>Signatures</u> | 7 |

Table of Contents

Explanatory Note

This Amendment No. 2 on Form 10-K/A (the Amendment) amends the Annual Report on Form 10-K of Globalstar, Inc. for the fiscal year ended December 31, 2008, originally filed with the Securities and Exchange Commission (SEC) on March 31, 2009 and amended to include Part III information in accordance with General Instruction G.3 on April 30, 2009. This Amendment is being filed to amend and restate Item 13. Certain Relationships and Related Transactions, and Director Independence in its entirety to correct a typographical error under the heading Director Independence and to provide currently-dated certifications from our chief executive officer and chief financial officer, as required by Sections 302 and 906 of the Sarbanes-Oxley Act of 2002. Accordingly, Item 15 of Part IV has also been amended to reflect the filing of these new certifications.

Items in the Annual Report on Form 10-K not referred to herein are not amended, and this amendment does not reflect events occurring after the original filing of the Annual Report on Form 10-K or modify or update those disclosures as presented in the Form 10-K except to the extent set forth herein.

Forward-Looking Statements

Certain statements contained in this Form 10-K/A, other than purely historical information, including, but not limited to, estimates, projections, statements relating to our business plans, objectives and expected operating results, and the assumptions upon which those statements are based, are forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995. These forward-looking statements generally are identified by the words believe, project, expect, anticipate, estimate, intend, strategy, plan, may, should, will, continue, will likely result, and similar expressions, although not all forward-looking statements contain these identifying words. These forward-looking statements are based on current expectations and assumptions that are subject to risks and uncertainties which may cause actual results to differ materially from the forward-looking statements. Forward-looking statements, such as the statements regarding our ability to develop and expand our business, our ability to obtain additional financing, our ability to manage costs, our ability to exploit and respond to technological innovation, the effects of laws and regulations (including tax laws and regulations) and legal and regulatory changes, the opportunities for strategic business combinations and the effects of consolidation in our industry on us and our competitors, our anticipated future revenues, our anticipated capital spending (including for future satellite procurements and launches), our anticipated financial resources, our expectations about the future operational performance of our satellites (including their projected operational lives), the expected strength of and growth prospects for our existing customers and the markets that we serve, and other statements contained in this Form 10-K/A regarding matters that are not historical facts, involve predictions. Risks and uncertainties that could cause or contribute to such differences include, without limitation, those in Item 1A. Risk Factors of our Form 10-K filed with the Securities and Exchange Commission on March 31, 2009. We do not intend, and undertake no obligation, to update any of our forward-looking statements after the date of this Form 10-K/A to reflect actual results or future events or circumstances.

Table of Contents

PART III

Item 13. Certain Relationships and Related Transactions, and Director Independence.

Related Person Transactions

Review of Transactions

Prior to the adoption of the Related Person Transactions Policy described below, the Board reviewed and monitored any arrangements with related persons. The related person transactions described below, except for the assumption of the credit agreement, began prior to our registration with the SEC.

On April 16, 2007, the Board adopted a written policy with respect to transactions in which we participate and related persons have a material interest. Related persons include our executive officers, directors, director nominees, 5% or more beneficial owners of the our Common Stock and immediate family members of these persons. Under the policy, the Audit Committee is responsible for reviewing and approving or ratifying related person transactions that exceed \$120,000 per year. Certain related person transactions have been deemed pre-approved by the Audit Committee and do not require any other approval under the policy. If an Audit Committee member or his or her family member is involved in a related person transaction, the member will not participate in the approval or ratification of the transaction. In instances where it is not practicable or desirable to wait until the next meeting of the Audit Committee for review of a related person transaction, the policy grants to the Chair of the Audit Committee (or, if the Chair or his or her family member is involved in the related person transaction, any other member of the Audit Committee) delegated authority to act between Audit Committee meetings for these purposes. A report of any action taken pursuant to delegated authority must be made at the next Audit Committee meeting.

For the Audit Committee to approve a related person transaction, it must be satisfied that it has been fully informed of the interests, relationships and actual or potential conflicts present in the transaction and must believe that the transaction is fair to us. The Audit Committee also must believe, if necessary, that we have developed a plan to manage any actual or potential conflicts of interest. The Audit Committee may ratify a related person transaction that did not receive pre-approval if it determines that there is a compelling business or legal reason for the company to continue with the transaction, the transaction is fair to the company and the failure to comply with the policy's pre-approval requirements was not due to fraud or deceit.

Reportable Transactions

Services Provided by Thermo. We and Thermo have an informal understanding that we will reimburse Thermo for expenses incurred by Messrs. Monroe, Lynch and Roberts in connection with their services to us including temporary living expenses while at our offices or traveling on its business, but for Mr. Monroe, generally excluding air travel expenses. For the year ended December 31, 2008, such reimbursements aggregated approximately \$219,000, including approximately \$84,000 related to expenses for Mr. Monroe. For the year ended

Table of Contents

December 31, 2008, we recorded approximately \$449,000 for general and administrative expenses incurred by Thermo on our behalf and for services provided to us by officers of Thermo. These were accounted for as a contribution to capital. Neither Thermo nor Messrs. Monroe, Lynch or Roberts receive any fees or reimbursements other than as described above or under Director Compensation.

Assumption of Credit Agreement. On November 7, 2007, we, Wachovia Investment Holdings, the lenders under the credit agreement and Thermo Funding Company agreed that Thermo Funding Company would receive an assignment of all of the rights (except indemnification rights) and assume all of the obligations of Wachovia Investment Holdings and the lenders under the credit agreement. The assignment and assumption was completed on December 17, 2007.

The credit agreement was amended and restated in connection with such assignment and assumption and further amended in December 2008. As currently in effect, the credit agreement provides for a \$100.0 million revolving credit facility and a \$100.0 million delayed draw term loan facility. At March 31, 2009, we had drawn \$73.8 million and \$100.0 million of the revolving credit facility and the delayed draw term loan facility, respectively.

In addition to the \$200.0 million revolving and delayed draw term loan facilities, the amended and restated credit agreement permits us to incur additional term loans on an equally and ratably secured *pari passu* basis in an aggregate amount of up to \$250.0 million (plus the amount of any reduction in the delayed draw term loan facility or prepayment of loans) from the lenders under the credit agreement or other banks, financial institutions or investment funds approved by us and the administrative agent. We have not sought commitments for these additional term loans. We may incur these additional term loans only if in the event of default then exists and it is in pro-forma compliance with all of the financial covenants of the credit agreement.

All obligations under the credit agreement are secured by a first lien on substantially all of our assets and our domestic subsidiaries, other than FCC licenses.

The credit agreement limits the amount of our capital expenditures, requires us to maintain minimum liquidity of \$5.0 million and provides that as of the end of the second full fiscal quarter after we place 24 of our second-generation satellites into service and at the end of each fiscal quarter thereafter, we must maintain a consolidated senior secured leverage ratio of not greater than 5.0 to 1.0.

All loans will mature on December 31, 2012. Revolving credit loans bear interest at LIBOR plus 4.25% to 4.75% or the greater of the prime rate or the Federal Funds rate plus 3.25% to 3.75%. The delayed draw term loan bears interest at LIBOR plus 6.0% or the greater of the prime rate or the Federal Funds rate plus 5.0%, and the delayed draw term loan facility bears an annual commitment fee of 2.0% until drawn or terminated. Additional term loans will bear interest at rates to be negotiated. The loans may be prepaid without penalty at any time.

Table of Contents

For the year ended December 31, 2008, we incurred an aggregate of \$11.9 million in interest and fees to Thermo Funding Company under the credit agreement. Thermo Funding Company has agreed to defer payments of interest until further notice. The Company capitalized \$11.9 in interest incurred during 2008 related to the loans from Thermo Funding Company.

The terms of the amended and restated credit agreement were approved by a special committee consisting of Messrs. Jones and Dalton, constituting a majority of our independent Directors.

Payments to Affiliates

In 2008, the Company purchased approximately \$7.7 million of services and equipment from a company whose chairman, Ken Jones, serves as a member of the Board.

Employment of Certain Family Members

During each of the years ended December 31, 2008, 2007 and 2006, we employed, in non-executive positions, certain immediate family members of one of our executive officers, Dennis Allen. The aggregate compensation amounts recognized for these immediate family members during the years ended December 31, 2008, 2007 and 2006 were \$0.3 million for each of the years. Mr. Allen left the employ of the Company in January 2009.

Director Independence

The Board has determined that Messrs. Dalton, Jones and McIntyre are independent directors as defined in Rule 10A-3 under the Securities Exchange Act of 1934 and in the NASDAQ Marketplace Rules. This determination was based on the absence of any relationship known to the Board between Messrs. Dalton or McIntyre and us (other than as a director and stockholder) and the Board's conclusion that Mr. Jones' minority interest in Thermo United LP, whose principal assets were sold before he became a director, and our equipment purchases from a company where he serves as chairman (as described below) do not affect his independence as a Director.

Mr. Jones owns a 14% limited partnership interest in Thermo United LP. The general partner of Thermo United LP and its remaining equity are controlled by Mr. Monroe and his affiliates. The sole asset of Thermo United LP was an approximately 78% interest in United Holdings LLC, an Oklahoma City based distributor of diesel engines, which was sold to an unaffiliated entity in January 2007, prior to Mr. Jones joining the Board. Thermo United LP was dissolved in March 2009.

In 2008, we purchased \$7.7 million of services and equipment from a company of which Mr. Jones is chairman. All such sales were made on customary terms and conditions.

Table of Contents

PART IV

Item 15. Exhibits and Financial Statements Schedules.

The exhibits listed on the accompanying Exhibit Index are filed as part of this Form 10-K/A.

Table of Contents

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

GLOBALSTAR, INC.

Date: May 11, 2009

By:

/s/ JAMES MONROE III
James Monroe III
Chairman and Chief Executive Officer

Table of Contents

EXHIBIT INDEX

| Exhibit Number | Description |
|-----------------------|--|
| 2.1* | Partnership Interest Purchase Agreement by and among GSSI, LLC, Globalstar, Inc., Loral/DASA Globalstar, L.P., Globalstar do Brasil, S.A., Loral/DASA do Brasil Holdings Ltda., Loral Holdings LLC, Global DASA LLC, LGP (Bermuda) Ltd., Mercedes-Benz do Brasil Ltda., and Loral Space & Communications Inc. dated December 21, 2007 (Exhibit 2.1 to Form S-4 filed January 30, 2008) |
| 3.1* | Amended and Restated Certificate of Incorporation of Globalstar, Inc. (Exhibit 3.1 to Form S-1, Amendment No. 5, filed October 27, 2006) |
| 3.2* | Amended and Restated Bylaws of Globalstar, Inc. (Exhibit 3.2 to Form 10-Q filed December 18, 2006) |
| 4.1* | Indenture between Globalstar, Inc. and U.S. Bank, National Association as Trustee dated as of April 15, 2008 (Exhibit 4.1 to Form 8-K filed April 16, 2008) |
| 4.2* | First Supplemental Indenture between Globalstar, Inc. and U.S. Bank, National Association as Trustee dated as of April 15, 2008, including Form of Global 5.75% Convertible Senior Note due 2028 (Exhibit 4.2 to Form 8-K filed April 16, 2008) |
| 4.3* | Amendment to First Supplemental Indenture between Globalstar, Inc. and U.S. Bank, National Association as Trustee dated as of December 1, 2008 (Exhibit 4.3 to Form 10-K filed March 31, 2009) |
| 10.1* | Satellite Products Supply Agreement by and between QUALCOMM Incorporated and New Operating Globalstar LLC dated as of April 13, 2004 (Exhibit 10.6 to Form S-1, Amendment No. 4, filed October 17, 2006) |
| 10.2* | Amendment No. 1 to Satellite Products Supply Agreement by and between QUALCOMM Incorporated and Globalstar LLC dated as of May 25, 2005 (Exhibit 10.7 to Form S-1, Amendment No. 4, filed October 17, 2006) |
| 10.3* | Amendment No. 2 to Satellite Products Supply Agreement by and between QUALCOMM Incorporated and Globalstar LLC dated as of May 25, 2005 (Exhibit 10.8 to Form S-1, Amendment No. 4, filed October 17, 2006) |
| 10.4* | Amendment No. 3 to Satellite Products Supply Agreement by and between QUALCOMM Incorporated and Globalstar LLC dated as of September 30, 2005 (Exhibit 10.9 to Form S-1, Amendment No. 4, filed October 17, 2006) |
| 10.5* | Amendment No. 4 to Satellite Products Supply Agreement by and between QUALCOMM Incorporated and Globalstar, Inc. dated as of August 15, 2006 (Exhibit 10.5 to Form 10-K filed March 31, 2009) |

Edgar Filing: Globalstar, Inc. - Form 10-K/A

Table of Contents

- 10.6* Amendment No. 5 to Satellite Products Supply Agreement by and between QUALCOMM Incorporated and Globalstar, Inc. dated as of November 20, 2007 (Exhibit 10.6 to Form 10-K filed March 31, 2009)
- 10.7* Amendment No. 6 to Satellite Products Supply Agreement by and between QUALCOMM Incorporated, Globalstar, Inc. and Globalstar Canada Satellite Company dated as of November 20, 2007 (Exhibit 10.7 to Form 10-K filed March 31, 2009)
- 10.8* Amendment No. 7 to Satellite Products Supply Agreement by and between QUALCOMM Incorporated, Globalstar, Inc. and Globalstar Canada Satellite Company dated as of October 27, 2008 (Exhibit 10.8 to Form 10-K filed March 31, 2009)
- 10.9* Satellite Construction Contract by and between Alcatel Alenia Space France and Globalstar, Inc. dated November 30, 2006 (Exhibit 10.1 to Form 10-Q filed December 18, 2006)
- 10.10* Amendment No. 3 to Satellite Construction Contract by and between Thales Alenia Space France (formerly Alcatel Alenia Space France) and Globalstar, Inc. dated as of December 19, 2007 (Amendment Nos. 1 and 2 superceded by Amendment No. 3) (Exhibit 10.24 to Form 10-K filed March 17, 2008)
- 10.11* Amendment No. 4 to Satellite Construction Contract by and between Thales Alenia Space France (formerly Alcatel Alenia Space France) and Globalstar, Inc. dated as of July 17, 2008 (Exhibit 10.13 to Form 10-K filed March 31, 2009)
- 10.12* Amendment No. 5 to Satellite Construction Contract by and between Thales Alenia Space France (formerly Alcatel Alenia Space France) and Globalstar, Inc. dated December 9, 2008 (Exhibit 10.14 to Form 10-K filed March 31, 2009)
- 10.13* Escrow Agreement by and among Globalstar, Inc., Alcatel Alenia Space France, and Société Générale as Escrow Agent dated December 21, 2006 (Exhibit 10.18 to Form 10-K filed April 2, 2007)
- 10.14* Control Network Facility Construction Contract by and between Alcatel Alenia Space France and Globalstar, Inc. dated March 22, 2007 (Exhibit 10.1 to Form 10-Q filed May 15, 2007)
- 10.15* Authorization to Proceed by and among Globalstar, Inc. and Thales Alenia Space France (formerly Alcatel Alenia Space France) dated January 8, 2008 (Exhibit 10.25 to Form 10-K filed March 17, 2008)
- 10.16* Spectrum Manager Lease Agreement between Globalstar Licensee LLC and Open Range Communications, Inc. dated as of October 31, 2007 (Exhibit 10.3 to Form 10-Q filed May 12, 2008)
- 10.17* Amendment Nos. 1-3 to Spectrum Manager Lease Agreement between Globalstar Licensee LLC and Open Range Communications, Inc. dated as of November 26, 2008 (Exhibit 10.17 to Form 10-K filed March 31, 2009)
-

Table of Contents

| | |
|--------|---|
| 10.18* | Launch Services Agreement by and between Globalstar, Inc. and Arianespace dated as of September 5, 2007 (Exhibit 10.1 to Form 10-Q filed November 14, 2007) |
| 10.19* | Amendment No. 1 to Launch Services Agreement by and between Globalstar, Inc. and Arianespace dated as of July 5, 2008 (Exhibit 10.19 to Form 10-K filed March 31, 2009) |
| 10.20* | Second Amended and Restated Credit Agreement by and among Globalstar, Inc., the lenders referred to therein, and Thermo Funding Company LLC as Administrative Agent dated as of December 17, 2007 (Exhibit 10.23 to Form 10-K filed March 17, 2008) |
| 10.21* | Letter Agreement regarding Second Amended and Restated Credit Agreement by and among Thermo Funding Company LLC and Globalstar, Inc. dated September 29, 2008 (Exhibit 10.2 to Form 10-Q filed November 10, 2008) |
| 10.22* | First Amendment to Second Amended and Restated Credit Agreement by and among Thermo Funding Company LLC and Globalstar, Inc. dated December 18, 2008 (Exhibit 10.22 to Form 10-K filed March 31, 2009) |
| 10.23* | Share Lending Agreement by and among Globalstar, Inc., Merrill Lynch International and Merrill Lynch, Pierce, Fenner & Smith Incorporated dated as of April 10, 2008 (Exhibit 10.2 to Form 8-K filed April 16, 2008) |
| 10.24* | Amendment to Share Lending Agreement by and among Globalstar, Inc. and Merrill Lynch International (through Merrill Lynch, Pierce, Fenner & Smith Incorporated) dated as of December 18, 2008 (Exhibit 10.24 to Form 10-K filed March 31, 2009) |
| 10.25* | Pledge and Escrow Agreement by and among Globalstar, Inc., U.S. Bank, National Association as Trustee, and U.S. Bank, National Association as Escrow Agent dated April 15, 2008 (Exhibit 10.1 to Form 8-K filed April 16, 2008) |
| 10.26* | Contract between Globalstar, Inc. and Hughes Network Systems LLC dated May 1, 2008 (Exhibit 10.1 to Form 10-Q filed August 11, 2008) |
| 10.27* | Purchase Agreement by and between Globalstar, Inc. and Ericsson Federal Inc. dated October 1, 2008 (Exhibit 10.1 to Form 10-Q filed November 10, 2008) |

Executive Compensation Plans and Agreements

| | |
|--------|---|
| 10.28* | Globalstar, Inc. 2006 Equity Incentive Plan (Exhibit 10.4 to Form S-1, Amendment No. 1, filed August 29, 2006) |
| 10.29* | Designated Executive Incentive Compensation Memorandum Agreement by and among Globalstar LLC, Fuad Ahmad, Anthony J. Navarra, Megan Fitzgerald, Robert Miller, Dennis Allen, and Steven Bell (Exhibit 10.10 to Form S-1, Amendment No. 4, filed October 17, 2006) |

Edgar Filing: Globalstar, Inc. - Form 10-K/A

Table of Contents

| | |
|--------|---|
| 10.30* | Non-Qualified Stock Option Award Agreement between Globalstar, Inc. and Peter J. Dalton (Exhibit 10.18 to Form S-1, Amendment No. 5, filed October 27, 2006) |
| 10.31* | Form of Designated Executive Award Agreement under the Globalstar, Inc. 2006 Equity Incentive Plan (Exhibit 10.1 to Form 10-Q filed August 14, 2007) |
| 10.32* | Form of Restricted Stock Units Agreement for Non-U.S. Designated Executives under the Globalstar, Inc. 2006 Equity Incentive Plan (Exhibit 10.2 to Form 10-Q filed August 14, 2007) |
| 10.33* | Form of Notice of Grant and Restricted Stock Agreement under the Globalstar, Inc. 2006 Equity Incentive Plan (Exhibit 10.29 to Form 10-K filed March 17, 2008) |
| 10.34* | Letter Agreement between Globalstar, Inc. and Thomas M. Colby dated May 1, 2008 (Exhibit 10.3 to Form 10-Q filed August 11, 2008) |
| 10.35* | Form of Non-Qualified Stock Option Award Agreement for Members of the Board of Directors under the Globalstar, Inc. 2006 Equity Incentive Plan (Exhibit 10.1 to Form 8-K filed November 20, 2008) |
| 21.1* | Subsidiaries of Globalstar, Inc. (Exhibit 21.1 to Form 10-K filed March 31, 2009) |
| 23.1* | Consent of Crowe Horwath LLP (Exhibit 23.1 to Form 10-K filed March 31, 2009) |
| 24.1* | Power of Attorney (included as part of signature page to Form 10-K filed March 31, 2009) |
| 31.1 | Section 302 Certification of Chief Executive Officer |
| 31.2 | Section 302 Certification of Chief Financial Officer |
| 32.1 | Section 906 Certification |

* Incorporated by reference.

Portions of the exhibit have been omitted pursuant to a request for confidential treatment filed with the Commission. The omitted portions have been filed with the Commission.
