

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

In the Matter of )  
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 )  
Harbinger Capital Partners Master Fund I, ) File No. ISP-PDR-20080129-00002  
Ltd. and Harbinger Capital Partners Special )  
Situations Fund, L.P. )  
  
Petition for Declaratory Ruling under )  
Section 310(b) of the Communications Act )  
of 1934, as Amended )

To: Chief, International Bureau

**AMENDMENT TO PETITION FOR DECLARATORY RULING**

The Commission has granted Harbinger Capital Partners Master Fund I, Ltd. (“Master Fund”) and Harbinger Capital Partners Special Situations Fund, L.P. (“Special Situations Fund”) (collectively, “Harbinger” or the “Harbinger Funds”) interim authority to have a voting interest in Sky Terra Communications, Inc. (“SkyTerra”) of up to 49.99% and an equity interest in SkyTerra of up to 49.99%.<sup>1</sup> Harbinger has pending the above-captioned request to convert this interim authority to permanent authority. Harbinger hereby amends its request for permanent authority in order to take into account shares of SkyTerra that are being held in two escrow accounts

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<sup>1</sup> *Mobile Satellite Ventures LLC and SkyTerra Communications, Inc., Order and Declaratory Ruling*, FCC 08-77 (2008) (“*Interim Order*”). SkyTerra Subsidiary LLC (formerly known as Mobile Satellite Ventures Subsidiary LLC) is an indirect subsidiary of SkyTerra.

pending action on an application seeking the Commission's consent to transfer control of SkyTerra to Harbinger.<sup>2</sup>

Harbinger demonstrates in this amendment that the voting stock held in escrow should not be counted towards Harbinger's voting interest in SkyTerra, because Harbinger has no right to vote the shares and has no influence over how the shares are voted. In addition, for reasons that are addressed in this amendment, Harbinger believes that the voting and non-voting stock held in escrow should not be counted towards Harbinger's equity interest in SkyTerra. In response to concerns recently raised by the Commission's staff with respect to this issue, however, Harbinger hereby amends its above-captioned request by seeking authority to hold up to 62% of SkyTerra's total equity, no more than 49.99% of which would be voting equity. This 62% authority would cover the 49.99% equity interest previously authorized in the *Interim Order* and also would cover the shares held in escrow, in the event that they were attributed to Harbinger for foreign equity purposes, plus a cushion of approximately 3%.

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<sup>2</sup> See FCC File Nos. ITC-T/C-20080822-00397; SES-T/C-20080822-01089; SES-T/C-20080822-01088; SAT-T/C-20080822-00157; 0021-EX-TU-2008; File No. 0003540644; ISP-PDR-20080822-00016. A petition for declaratory ruling associated with this transfer of control application requests authority for Harbinger to have voting and equity interests in SkyTerra of up to 100%.

**I. Harbinger Has No Right to Vote the Escrowed Shares and Has No Influence Over How the Shares Are Voted.**

At present, Harbinger's voting interest in SkyTerra is 48.04%. Various voting shares of SkyTerra not held by Harbinger have been placed in escrow pending action on the SkyTerra transfer of control application and are to be transferred to Harbinger if the Commission grants the transfer of control application. These escrowed shares consist of:

(1) Voting shares amounting to 0.91% of SkyTerra's voting stock and 0.41% of SkyTerra's total equity that were placed in escrow in connection with an April 2008 transaction in which Harbinger acquired SkyTerra shares from various Apollo funds ("Apollo"). These shares are subject to an escrow agreement (the "Akin Gump Escrow Agreement") executed by Apollo, Harbinger, and Akin Gump Strauss Hauer & Feld LLP, which serves as escrow agent.

(2) Voting shares amounting to 3.35% of SkyTerra's voting stock and 1.50% of SkyTerra's total equity that were placed in escrow when Well Fargo Bank, National Association ("Wells Fargo") acquired them in January and February 2009. These shares are subject to an escrow agreement (the "Wells Fargo Escrow Agreement") executed by Harbinger and Wells Fargo.<sup>3</sup>

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<sup>3</sup> Copies of the Akin Gump Escrow Agreement and the Wells Fargo Escrow Agreement, as amended, were filed with the Commission by letter of counsel dated March 10, 2009.

The voting shares held in escrow should not be counted towards Harbinger's voting interest in SkyTerra. Harbinger has no right to vote the shares and has no influence over how the shares are voted.

Under the Akin Gump Escrow Agreement, Apollo, which has agreed to sell the escrowed voting shares to Harbinger, continues to have title to the shares and continues to have the right to vote the shares while the shares are in escrow. Harbinger, moreover, has not communicated, and hereby pledges that it will not communicate, with either Apollo or Akin Gump concerning how the shares should be voted. The voting rights of Apollo, therefore, remain unchanged from the time prior to the April 2008 transaction between Harbinger and Apollo.

Under the Wells Fargo Escrow Agreement, Wells Fargo has title to the escrowed voting shares. Although Wells Fargo also has the right to vote the shares, it has committed not to vote them while they are held in escrow.<sup>4</sup> In fact, no SkyTerra stockholder votes have been held since the time that Wells Fargo took title to the voting shares and, of course, Harbinger has had no communication with Wells Fargo concerning how the escrowed shares should be voted. Given that the voting shares

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<sup>4</sup> A copy of an amendment to the Wells Fargo Escrow Agreement reflecting this commitment is attached hereto. The amendment was executed after a copy of the Wells Fargo Escrow Agreement was filed with the Commission last month.

held in escrow by Wells Fargo have not and will not be voted, there is no basis for counting the shares towards Harbinger's voting interest in SkyTerra.<sup>5</sup>

Harbinger, moreover, has neither *de jure* nor *de facto* control of SkyTerra. The foregoing discussion establishes that Harbinger lacks *de jure* control, because it has a less than 50% voting interest in SkyTerra. Harbinger also does not have *de facto* control, because it has not elected a majority of SkyTerra's board and hereby pledges that it will not elect a majority of SkyTerra's board unless the SkyTerra transfer of control application is granted.

**II. It is Consistent with the Public Interest for Harbinger to Have an Equity Interest in SkyTerra of up to 62%.**

At present, Harbinger has an equity interest in SkyTerra of 49.09%. This equity level is below the equity limit of 49.99% established by the *Interim Order*.

Various shares of SkyTerra not held by Harbinger have been placed in escrow pending action on the SkyTerra transfer of control application and are to be transferred to Harbinger if the Commission grants the transfer of control application. These escrowed shares consist of the voting shares identified in Section I of this amendment and non-voting shares amounting to 7.27% of SkyTerra's total equity that were transferred to Well Fargo and placed in escrow in connection with a September 2008

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<sup>5</sup> Although Wells Fargo will refrain from voting them, the shares will remain voting shares for corporate purposes. Even if the shares were treated as non-voting shares for foreign ownership purposes, however, which would have the effect of decreasing the number of issued and outstanding voting shares, thereby increasing Harbinger's percentage of issued and outstanding voting shares, Harbinger's voting interest in SkyTerra would remain below 49.99%.

transaction in which Harbinger acquired SkyTerra shares from TerreStar Corporation. These non-voting shares are subject to the Wells Fargo Escrow Agreement.

Harbinger believes that the voting and non-voting shares held in escrow pursuant to the Akin Gump Escrow Agreement and the Wells Fargo Escrow Agreement should not be counted towards Harbinger's equity interest in SkyTerra, because Harbinger does not have title to the shares. Rather, Apollo has title to the shares that are governed by the Akin Gump Escrow Agreement, and Wells Fargo has title to the shares that are governed by the Wells Fargo Escrow Agreement.

To Harbinger's knowledge, however, there are no Commission precedents addressing the regulatory status for purposes of the Commission's foreign ownership limits of shares held in escrow. In light of the lack of precedents, and in response to concerns recently raised by the Commission's staff, Harbinger hereby amends its request for permanent authority by seeking authority to have an equity interest of up to 62% in SkyTerra, no more than 49.99% of which would be a voting interest.

Authority for up to 62% would cover the shares authorized in the *Interim Order* and also would cover the shares held in escrow pursuant to the Akin Gump Escrow Agreement and the Wells Fargo Escrow Agreement,<sup>6</sup> in the event that the escrowed shares were attributed to Harbinger for foreign equity purposes. In addition, authority for up to 62% would afford a cushion of approximately 3% in the event that there were

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<sup>6</sup> The shares held by Harbinger and the shares that are in escrow collectively amount to 58.27 % of SkyTerra's voting and non-voting shares.

unanticipated fluctuations in Harbinger's equity percentage (*e.g.*, if SkyTerra bought back some of its shares, thereby reducing the number of issued and outstanding shares) or there were market developments making it necessary for Harbinger to acquire additional SkyTerra shares.

Increasing to 62% the equity interest in SkyTerra for which Harbinger is authorized would be fully consistent with the rationale of the *Interim Order* and with the reasons submitted by Harbinger in its pending request for permanent authority. As stated in Harbinger's request, and as is still the case, all but a *de minimis* portion of Harbinger's investors are from the United States or other WTO-member states,<sup>7</sup> thereby establishing a presumption in favor of permitted entry.<sup>8</sup> Further, Harbinger is controlled by a U.S citizen, who has a 100% voting interest, and each of the Harbinger Funds has its principal place of business either in the United States or a country that is a WTO signatory. Authorizing a higher level of investment by Harbinger in SkyTerra, therefore, would "facilitate the customary operations of capital markets" by removing "unnecessary barriers to entry" that would run counter to the policies enunciated by the Commission in its *Foreign Participation Order*.<sup>9</sup>

Although the authority granted in the *Interim Order* stopped at 49.99 % (and was silent as to escrow arrangements), there is nothing in the order's logic, stated reasoning, or precedent support that would distinguish between a non-controlling equity interest

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<sup>7</sup> Non-WTO investors have a less than 1% ownership interest in Harbinger.

<sup>8</sup> See *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, Report and Order*, 12 FCC Rcd 23891, 13919 (1997) ("*Foreign Participation Order*").

<sup>9</sup> *Interim Order*, ¶ 18.

of 49.99% and a non-controlling equity interest of 62%. Moreover, the benefits of facilitating Harbinger's investments in vital mobile satellite service technologies apply with even greater force in today's volatile economy and credit markets than they did at the time.

Accordingly, it is hereby respectfully requested that Harbinger be authorized to have a non-controlling equity interest in SkyTerra of up to 62%.

Respectfully submitted,

HARBINGER CAPITAL PARTNERS MASTER FUND I,  
LTD.  
HARBINGER CAPITAL PARTNERS SPECIAL  
SITUATIONS FUND, L.P.

/s/ Joseph A. Godles  
Henry Goldberg  
Joseph A. Godles  
GOLDBERG, GODLES, WIENER & WRIGHT  
1229 Nineteenth Street, NW  
Washington, DC 20036  
(202) 429-4900  
*Their Attorneys*

April 17, 2009

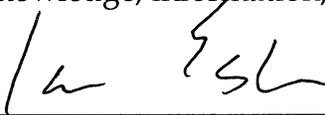
## **SUPPORTING DECLARATION**

## DECLARATION OF IAN ESTUS

1. I am Vice President of Harbinger Capital Partners LLC, the Investment Manager of Harbinger Capital Partners Master Fund I, Ltd. and Vice President of Harbinger Capital Partners Special Situations GP, LLC, the general partner of Harbinger Capital Partners Special Situations Fund, L.P. (collectively, "Harbinger").

2. I am providing this declaration in support of an Amendment to Petition for Declaratory Ruling (File No. ISP-PDR-20080129-00002) ("Amendment") to which this declaration is attached.

3. I declare under penalty of perjury that the factual statements made in the Amendment concerning Harbinger and the commitments in the Amendment made by Harbinger are true and correct to the best of my knowledge, information, and belief.

  
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Ian Estus

Dated: April 16, 2009

**AMENDMENT TO WELLS FARGO ESCROW AGREEMENT**

## EXECUTION VERSION

### AMENDMENT NO. 2 TO ESCROW AGREEMENT

This Amendment No. 2, dated April 15, 2009 (the "Amendment No. 2"), is entered into by and among Harbinger Capital Partners Master Fund, Ltd., an exempted company organized under the laws of the Cayman Islands ("Harbinger Master"), Harbinger Capital Partners Special Situations Fund, L.P., a Delaware limited partnership ("Harbinger Special" and, together with Harbinger Master, "Harbinger"), and Wells Fargo Bank, National Association, as escrow agent ("Escrow Agent"). Harbinger and the Escrow Agent are referred to herein as the "Parties" and individually as a "Party." Capitalized terms not otherwise defined herein shall have the same meaning given to them in the Escrow Agreement (as defined below).

#### RECITALS

Harbinger and the Escrow Agent are parties to that certain Escrow Agreement, dated as of November 7, 2008, as amended by that certain Amendment No. 1 to Escrow Agreement, dated as of January 27, 2009 (as amended, the "Agreement"); and

Section 4.7 of the Agreement provides that Harbinger and the Escrow Agent may amend in writing the Escrow Agreement; and

Harbinger and the Escrow Agent desire to amend the Agreement.

Therefore, in consideration of the promises and agreements of the Parties and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Amendment to Section 1.2. Section 1.2. is hereby amended and restated in its entirety to read as follows:

Section 1.2. Title, Voting Rights; Distributions and Investments. Until such time as the Escrow Agent transfers and delivers the Escrow Property in accordance with Section 1.3 of this Agreement, (a) title to the Escrow Property shall remain in the Escrow Agent and the Remaining Shares, the Private Purchase Shares (if any), the Open Market Shares (if any), the Tendered Shares (if any), and any other portion of the Escrow Property consisting of securities issued by the Company shall remain registered on the books of the Company in the name of the Escrow Agent or its nominees; and (b) the Escrow Agent shall not exercise any voting rights associated with the Remaining Shares, the Private Purchase Shares (if any), the Open Market Shares (if any), the Tendered Shares (if any), and any other portion of the Escrow Property consisting of securities issued by the Company. The Escrow Agent is authorized and directed to deposit, transfer, hold and invest the Cash Distributions and any investment income thereon as set forth in Exhibit A hereto, or as set forth in any subsequent written instruction signed by Harbinger. Any investment earnings and income on the Cash Distributions shall become part of the Escrow Property, and shall be disbursed in accordance with Section 1.3 of this Agreement.

2. Full Force and Effect. Except as expressly amended and restated pursuant to this Amendment No. 2, the Agreement shall remain unchanged and in full force and effect, and is hereby ratified and confirmed in all respects.

3. Governing Law. This Amendment No. 2 shall be governed by and construed in accordance with the laws of the State of New York applicable to contracts made and performed in such state without regard to the conflicts or choice of law provisions thereof that would give rise to the application of the domestic substantive law of any other jurisdiction.

4. Entire Agreement. This Amendment No. 2, together with the Agreement and the Transfer and Termination Agreement set forth the entire agreement and understanding of the Parties related to the Escrow Property.

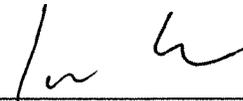
5. Counterparts. This Amendment No. 2 may be executed in one or more counterparts, each of which when executed shall be deemed to be an original, and such counterparts shall together constitute one and the same instrument.

[The remainder of this page left intentionally blank.]

IN WITNESS WHEREOF, this Amendment No. 2 has been duly executed as of the date first written above.

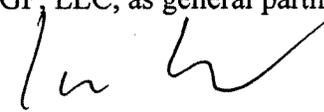
HARBINGER CAPITAL PARTNERS MASTER  
FUND I, LTD.

By: Harbinger Capital Partners L.L.C., its  
Investment Manager

By:   
\_\_\_\_\_  
Name: Ian Estus  
Title: Vice President

HARBINGER CAPITAL PARTNERS  
SPECIAL SITUATIONS FUND, L.P.

By: Harbinger Capital Partners Special Situations  
GP, LLC, as general partner

By:   
\_\_\_\_\_  
Name: Ian Estus  
Title: Vice President

WELLS FARGO BANK, NATIONAL  
ASSOCIATION, as Escrow Agent

By: \_\_\_\_\_  
Name:  
Title:

IN WITNESS WHEREOF, this Amendment No. 2 has been duly executed as of the date first written above.

HARBINGER CAPITAL PARTNERS MASTER  
FUND I, LTD.

By: Harbinger Capital Partners Offshore Manager,  
L.L.C., as investment manager

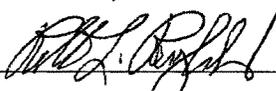
By: \_\_\_\_\_  
Name:  
Title:

HARBINGER CAPITAL PARTNERS  
SPECIAL SITUATIONS FUND, L.P.

By: Harbinger Capital Partners Special Situations  
GP, LLC, as general partner

By: \_\_\_\_\_  
Name:  
Title:

WELLS FARGO BANK, NATIONAL  
ASSOCIATION, as Escrow Agent

By:   
Name: \_\_\_\_\_  
Title: **Robert L. Reynolds**  
**Vice President**