

STAMP & RETURN

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

FILED/ACCEPTED

MAR 14 2007

Federal Communications Commission
Office of the Secretary

In the Matter of)
)
)

Mobile Satellite Ventures Subsidiary LLC)

File No. _____

Petition for Declaratory Ruling under Section 310)
of the Communications Act of 1934, As Amended)
_____)

**PETITION FOR DECLARATORY RULING UNDER
SECTION 310 OF THE COMMUNICATIONS ACT, AS AMENDED**

Mobile Satellite Ventures Subsidiary LLC (“MSV”) and SkyTerra Communications, Inc. (“SkyTerra” and, together with MSV, the “Petitioners”), by this petition (“Petition”), jointly request a declaratory ruling from the Federal Communications Commission (“Commission” or “FCC”) that it is in the public interest for MSV to have indirect foreign ownership in excess of the 25% benchmark under Section 310(b)(4) of the Communications Act, 47 U.S.C. § 310(b)(4).¹ Specifically, MSV and SkyTerra seek a declaratory ruling that it is in the public interest for the following entities (collectively, the “Named SkyTerra Shareholders”) to hold indirectly up to and including aggregate 18.96% foreign equity and

¹ To the extent necessary while the instant request for declaratory ruling remains pending, Petitioners request special temporary authorization for MSV to maintain its current level of foreign ownership. Moreover, in the event the Commission determines that the foreign ownership levels in MSV are higher than calculated herein, Petitioners request that the FCC issue a declaratory ruling authorizing such higher level of foreign ownership.

30.34% foreign voting interests in MSV through their interests in SkyTerra: (i) five private equity funds affiliated with Apollo Management (“Apollo Funds”); (ii) five private equity funds affiliated with Columbia Capital (“Columbia Funds”); (iii) three private equity funds affiliated with Spectrum Equity (“Spectrum Funds”); (iv) two private investment funds defined herein as the “Harbinger Funds”; (v) the former minority investors of MSV Investors, LLC;² (vi) the non-U.S., non-Canadian shareholders of BCE, Inc. (“BCE”); and (vii) Motient Corporation (“Motient”). In addition, Petitioners seek a declaratory ruling that it is in the public interest for Motient to hold directly up to and including a 0.83% foreign equity and 0.77% foreign voting interest in MSV. Petitioners also request that, consistent with Commission precedent, in addition to the approved foreign 19.79% equity (18.96% through SkyTerra + 0.83% through Motient) and 31.11% voting (30.34% through SkyTerra + 0.77% through Motient) interests in MSV, the FCC permit MSV, through SkyTerra and Motient, to have up to and including an additional aggregate 25% indirect equity and/or voting interest from foreign individuals or entities without seeking further Commission approval under Section 310(b)(4), subject to standard conditions.³ For the reasons set forth below, Petitioners

² SkyTerra previously owned 80% of MSV Investors, LLC. The remaining 20% of the membership interests in MSV Investors, LLC were held by a group of minority shareholders. *See In the Matter of Motient Corporation and subsidiaries, Transferors, SkyTerra Communications, Inc., Transferee, Application to Transfer Control of Mobile Satellite Ventures Subsidiary LLC and MSV International LLC*, note 7, WC Docket No. 06-106 (filed May 17, 2006). In September 2006, SkyTerra acquired all of the membership interests in MSV Investors, LLC in exchange for shares of SkyTerra stock. As a result, SkyTerra became the sole member of MSV Investors, LLC and the former minority members of MSV Investors, LLC became direct shareholders of SkyTerra stock (such shareholders, the “Former MSV Minority Investors”).

³ *See, e.g., Motient Corporation and Subsidiaries, Transferors, and SkyTerra Communications, Inc., Transferee, Application for Authority to Transfer Control of Mobile Satellite Ventures Subsidiary LLC*, Memorandum Opinion and Order and Declaratory Ruling, WC Docket No. 06-106 (DA 06-1872) (Sept. 15, 2006) (“*Declaratory Ruling*”); *Loral Satellite, Inc. (Debtor-in-*

submit that it will serve the public interest to permit these foreign ownership interests in excess of the 25% benchmark.

I. BACKGROUND

MSV is the entity licensed by the Commission in 1989 to construct, launch, and operate a United States Mobile Satellite Service (“MSS”) in the L band.⁴ MSV’s licensed satellite (AMSC-1 or MSAT-2) was launched in 1995 and MSV began offering service in 1996. MSV also is the successor to TMI Communications and Company, Limited Partnership (“TMI”) with respect to TMI’s provision of L band MSS in the United States. Today, MSV offers a full range of mobile satellite services, including voice and data, using both its own U.S.-licensed satellite and the Canadian-licensed L band satellite (MSAT-1) licensed to Mobile Satellite Ventures (Canada), Inc. In May 2005, the Commission licensed MSV to launch and operate a replacement L band satellite at 101° W.L. (“MSV-1”).

On September 15, 2006, the FCC’s International Bureau (“Bureau”) adopted an order in which it consented to the transfer of control of MSV from Motient to SkyTerra.⁵ The Bureau determined that, following this transfer of control, MSV would have 18.82% foreign equity interests and 25.34% foreign voting interests.⁶ Because the level of foreign voting

Possession) and Loral SpaceCom Corporation (Debtor-in-Possession), and Intelsat North America, LLC, Applications for Consent to Assignments of Space Station Authorizations and Petition for Declaratory Ruling Under Section 310(b)(4) of the Communications Act of 1934, as Amended, Order and Authorization, 19 FCC Rcd 2404, ¶ 26 (2004).

⁴ *Order and Authorization*, 4 FCC Rcd 6041 (1989); *remanded by Aeronautical Radio, Inc. v. FCC*, 928 F.2d 428 (D.C. Cir. 1991); *Final Decision on Remand*, 7 FCC Rcd 266 (1992); *aff’d, Aeronautical Radio, Inc. v. FCC*, 983 F.2d 275 (D.C. Cir. 1993); *see also AMSC Subsidiary Corporation, Memorandum Opinion and Order*, 8 FCC Rcd 4040 (1993).

⁵ *See Declaratory Ruling*, at ¶¶ 1, 52.

⁶ *Id.*, at ¶ 43.

interests exceeded 25%, on its own motion, the Bureau adopted a declaratory ruling (“Declaratory Ruling”) permitting MSV to be owned directly or indirectly by (i) TMI or its parent corporation, BCE and their Canadian shareholders, up to and including a Canadian equity and/or voting interest of 40%, and (ii) the Apollo Funds and their foreign limited partners and members, up to and including a 2.15% foreign equity interest and a 3.74% foreign voting interest.⁷ The Declaratory Ruling also authorized MSV to accept up to and including an additional aggregate 25% indirect foreign equity and/or voting interest from these foreign investors and other foreign investors subject to certain conditions.⁸

Upon consummation of the transfer of control of MSV to SkyTerra, Motient received approximately 29.1 million shares of SkyTerra non-voting stock in exchange for the majority of Motient’s interests in Mobile Satellite Ventures, L.P. (“MSV LP”). Pursuant to a contractual obligation, Motient expected that it would dividend promptly approximately 25.5 million shares of this stock to its shareholders, which stock would convert to voting stock.⁹ Motient anticipated distributing this dividend within two to four months after the exchange with SkyTerra.¹⁰

The Declaratory Ruling approved the level of foreign ownership in MSV based on MSV’s ownership composition after the Motient dividend had been issued to its shareholders. Due to pending litigation, Petitioners understand that Motient has not yet issued this dividend. Thus, the total number of outstanding voting shares of SkyTerra is approximately half of the

⁷ *Id.*, at ¶ 46.

⁸ *Id.*

⁹ See Letter to Marlene H. Dortch, Secretary, Federal Communications Commission, from Henry Goldberg, Attorney for Motient Corporation, WC Docket 06-106, 2 (Aug. 24, 2006).

¹⁰ *Id.*

number of shares that would be outstanding had the dividend occurred. Moreover, Harbinger Capital Partners Master Fund I, Ltd., a Cayman Islands exempted company, has increased its ownership of SkyTerra since September 2006. As a result, the overall foreign voting interests in MSV are greater than anticipated by the Declaratory Ruling and SkyTerra and MSV are submitting the instant Petition.

II. OWNERSHIP STRUCTURE

MSV, a Delaware limited liability company, is a direct wholly-owned subsidiary of MSV LP, a Delaware limited partnership. The general partner of MSV LP is Mobile Satellite Ventures, G.P. (“MSV GP”), also a Delaware limited partnership. Virtually all of the economic interests in MSV LP are held by its limited partners, SkyTerra (95.08% equity interest on an undiluted basis) and Motient (4.46% equity interest on an undiluted basis).¹¹ SkyTerra holds 100% of the interests of MSV GP and holds all voting interest and, thus, voting control of MSV LP.¹²

¹¹ Various individual U.S. citizens or entities organized under the laws of the United States hold 97.06% of the remaining 0.46% of the equity interests (on an undiluted basis) in MSV LP. 2.94% of the remaining 0.46% of these equity interests are held by a citizen of Canada.

¹² In September 2006, the Bureau approved limited partners of MSV LP with the following ownership interests: SkyTerra (58.8% equity interest), TMI (21.8% equity interest), and Motient (19.2% equity interest). In addition, the Bureau approved SkyTerra and TMI interests of 78.2% and 21.8% in MSV GP, respectively. Through its majority interest in MSV GP, SkyTerra held voting control of MSV LP. Pursuant to two subsequent transactions, SkyTerra obtained a 95.08% interest (on an undiluted basis) in MSV LP and a 100% interest in MSV GP. Specifically, on January 5, 2007, SkyTerra acquired all of TMI’s membership interests in MSV LP in exchange for approximately 22 million shares of non-voting stock of SkyTerra. As a result of this exchange, SkyTerra became the sole owner of MSV GP and owned approximately 83% of the outstanding limited partnership interests of MSV LP on an undiluted basis. On February 12, 2007, Motient exercised its option to acquire approximately 14.4 million shares of non-voting stock of SkyTerra. This transaction resulted in SkyTerra owning approximately 95% of the limited partnership interests of MSV LP on an undiluted basis.

A. Interests in MSV Held Through SkyTerra

SkyTerra is a publicly-traded corporation organized under the laws of Delaware. No single shareholder holds a 50% or greater equity or voting interest in SkyTerra. The Named SkyTerra Shareholders collectively hold approximately 94.23% of the equity and 82.14% of the voting interests of SkyTerra. The remaining 5.77% of the equity and 17.86% of the voting interests of SkyTerra are widely-disbursed. Foreign individuals and entities hold 20.12% of the equity¹³ and 33.91% of the voting interests in SkyTerra. The Named SkyTerra Shareholders account for 18.96% and 30.34% of these foreign equity and voting interests, respectively. Attachment A hereto depicts the current foreign ownership of MSV through SkyTerra and its shareholders. Information regarding the ownership of the each of the Named SkyTerra Shareholders is set forth below.¹⁴

Apollo Funds.¹⁵ In the Declaratory Ruling, the Bureau approved the Apollo Funds and their foreign limited partners and members to hold up to and including 2.15% of the equity and 3.74% of the voting interests in MSV.¹⁶ The Bureau also determined that, based on

¹³ See note 20 *infra*.

¹⁴ The non-U.S. and non-WTO equity and voting ownership of the SkyTerra shareholders set forth herein is based on ownership information provided by each such shareholder.

¹⁵ For additional information regarding the ownership of the Apollo Funds, see Letter to Marlene H. Dortch, Secretary, Federal Communications Commission, from Tom W. Davidson, Attorney for SkyTerra Communications, Inc. and Henry Goldberg, Attorney for Motient Corporation, WC Docket 06-106 (Aug. 22, 2006) (“August 22, Foreign Ownership Letter”); Letter to Marlene H. Dortch, Secretary, Federal Communications Commission, from Tom W. Davidson, Attorney for SkyTerra Communications, Inc. and Henry Goldberg, Attorney for Motient Corporation, WC Docket 06-106 (Aug. 31, 2006) (“August 31 Foreign Ownership Letter”); Letter to Marlene H. Dortch, Secretary, Federal Communications Commission, from Tom W. Davidson, Attorney for SkyTerra Communications, Inc., WC Docket 06-106 (Aug. 22, 2006) (“August 22 Section 1.65 Update”).

¹⁶ *Declaratory Ruling*, at ¶ 46.

information previously supplied by SkyTerra, all of the foreign interests in the Apollo Funds are attributable to WTO Member countries.¹⁷

The Apollo Funds currently hold a 15.38% equity and 31.14% voting interest in MSV through their 16.17% equity¹⁸ and 31.14% voting¹⁹ interests in SkyTerra. Foreign individuals and entities presently account for 6.0% of the equity and 5.7% of the voting interests in the Apollo Funds and 3.09% of the equity ((6.0% x 16.17%) + 2.12%) and 3.89% ((5.7% x 31.14%) + 2.12%) of the voting interests in SkyTerra.²⁰ Thus, foreign individuals and entities

¹⁷ *Declaratory Ruling*, at ¶ 45 (citing August 22 Foreign Ownership Letter and August 31 Foreign Ownership Letter).

¹⁸ To calculate equity interests of each of the Named SkyTerra Shareholders in MSV through SkyTerra, this analysis multiplied the specific Named SkyTerra Shareholders' interest in SkyTerra by SkyTerra's interest in MSV. For example, this analysis determined that the Apollo Funds hold a 15.38% interest in MSV. This interest was determined by multiplying the Apollo Funds' interest in SkyTerra (16.17%) by SkyTerra's interest (on an undiluted basis) in MSV (95.08%).

¹⁹ To calculate voting interests of each of the Named SkyTerra Shareholders in MSV through SkyTerra, this analysis passed through the specific Named SkyTerra Shareholders' interest in SkyTerra to MSV. Consistent with the FCC's foreign ownership precedent, this analysis did not apply the multiplier to any of the Named SkyTerra Shareholders' voting interests in MSV through SkyTerra. For example, this analysis determined that the Apollo Funds hold a 31.14% voting interest in MSV. This interest was determined by calculating the Apollo Funds aggregate voting interest in SkyTerra (31.14%) and passing this voting interest through to MSV (31.14%).

²⁰ The foreign ownership analysis presented herein attributes the 2.12% foreign equity and voting interest to the Apollo Funds through Apollo Investment Fund IV, L.P. ("AIF IV") based on the Bureau's analysis in the *Declaratory Ruling*. See *Declaratory Ruling*, at note 113. The Bureau determined that an additional 2.12% foreign equity interest should be attributable to the Apollo Funds by virtue of AIF IV's interest in AIF/RRRR, LLC, AP/RM Acquisition, LLC, and ST/RRRR, LLC (collectively, the "Apollo LLCs"). The Bureau used the multiplier to calculate the following additional 2.12% foreign equity interests in the Apollo LLCs attributable to the 2.11% foreign equity interests in AIF IV: AF/RRRR, LLC (0.03%) (2.11% x 1.41%); AP/RM Acquisition LLC (2.00%) (2.11% x 94.91%); and ST/RRRR, LLC (0.09%) (2.11% x 4.09%). The Bureau then added the aggregate 2.12% additional interests into the total foreign equity of the Apollo Funds (2.12% + 1.53% equity interest of the Apollo Funds as calculated by the Applicants (as such term is defined in the *Declaratory Ruling*)). Petitioners submit that, rather than directly add this additional 2.12% foreign equity to the Apollo Funds, the Bureau should have applied the multiplier to the Apollo LLCs individually, as follows: AF/RRRR, LLC (0.00% foreign ownership in MSV) (2.09% equity interest in SkyTerra x (0.07% foreign ownership through AF/RRRR, LLC + 0.03% foreign ownership through AIF IV)); AP/RM Acquisition LLC (0.05% foreign ownership in MSV) (0.74% equity interest in SkyTerra x (5.09% foreign ownership through AP/RM Acquisition, LLC + 2.00% foreign ownership

associated with the Apollo Funds presently hold 2.94% of the equity (3.09% x 95.08%) and 3.89% of the voting interests in MSV. All of the foreign interests in the Apollo Funds are attributable to WTO Member countries.

Columbia Funds. The Columbia Funds are Columbia Capital Equity Partners III (QP), L.P. (“CCEP III (QP)”)²¹ Columbia Capital Equity Partners III (AI), L.P. (“CCEP III (AI)”)²² Columbia Capital Investors III, LLC (“CCI III”),²³ Columbia Capital Employee Investors III, LLC (“CCEI III”),²⁴ and Columbia Capital Equity Partners III (Cayman), L.P. (“CCEP III (Cayman)”)²⁵

through AIF IV)); and ST/RRRR, LLC (0.00% foreign ownership in MSV) (0.93% equity interest in SkyTerra x (0.22% foreign ownership through ST/RRRR, LLC + 0.09% foreign ownership through AIF IV)). Consequently, when the foreign equity interests of the remaining two Apollo Funds (0.44%) (20.73% x 2.12% and Apollo Overseas Partners IV, LP (1.05%) (1.05% x 99.73%)) are taken into account (AIF IV), the aggregate foreign equity interest of the Apollo Funds in SkyTerra calculated in August 2006 should have been 1.54%.

²¹ CCEP III (QP) is a Delaware limited partnership. The partners of CCEP III (QP) are U.S. citizens and limited partnerships, limited liability companies, and trusts organized under the laws of the United States, with the exception of one limited partner that is a non-U.S. corporation and holds approximately 1.56% of the equity of CCEP III (QP). U.S. limited partners account for approximately 98.44% of the equity of CCEP III (QP). The general partner of CCEP III (QP) is organized under the laws of the United States, and CCEP III (QP) is ultimately controlled by citizens of the United States. See Attachment B hereto for information regarding the categories of foreign investors in CCEP III (QP).

²² CCEP III (AI) is a Delaware limited partnership. The partners of CCEP III (AI) are U.S. citizens and limited partnerships, limited liability companies, and trusts organized under the laws of the United States. U.S. limited partners account for 100.0% of the equity of CCEP III (AI). The general partner of CCEP III (AI) is organized under the laws of the United States, and CCEP III (AI) is ultimately controlled by citizens of the United States.

²³ CCI III is a Delaware limited liability company. The members of CCI III are U.S. citizens and limited partnerships, limited liability companies, and trusts organized under the laws of the United States. U.S. members account for 100.0% of the equity of CCI III. CCI III is ultimately controlled by citizens of the United States.

²⁴ CCEI III is a Delaware limited liability company. The members of CCEI III are U.S. citizens. U.S. members account for 100% of the equity of CCEI III. CCEI III is ultimately controlled by citizens of the United States.

²⁵ CCEP III (Cayman) is a Cayman Islands limited partnership. The general partner of CCEP III (Cayman) is Columbia Capital Equity Partners (Cayman) III, Ltd, a Cayman Islands company

The Columbia Funds currently hold a 5.20% equity and 16.91% voting interest in MSV through their 5.47% equity and 16.91% voting interest in SkyTerra. Foreign individuals and entities presently account for 30.45% of the equity and voting interests in the Columbia Funds²⁶ and 1.67% of the equity (30.45% x 5.47%) and 5.15% (30.45% x 16.91%) of the voting interests in SkyTerra. Thus, foreign individuals and entities associated with the Columbia Funds presently hold 1.59% of the equity (1.67% x 95.08%) and 5.15% of the voting interests in MSV. All of the foreign interests in the Columbia Funds are attributable to WTO Member countries.²⁷

ultimately controlled by U.S. citizens. This analysis assumes that all of the interests in CCEP III (Cayman) are attributable to foreign individuals or entities.

Although this analysis attributes all of the interests in CCEP III (Cayman) to foreign interests, the foreign ownership of CCEP III (Cayman) through its limited partners is only 45.28%. Non-U.S. limited partners account for 45.28% of the equity of CCEP III (Cayman). U.S. limited partners account for 54.72% of the equity of these funds. See Attachment B hereto for information regarding the categories of foreign investors in CCEP III (Cayman).

²⁶ The 30.45% aggregate foreign ownership of the Columbia Funds is calculated as follows: (A) CCEP III (QP)'s interest in the SkyTerra shares held by the Columbia Funds, collectively (53.92%) multiplied by the foreign ownership of CCEP III (QP) (1.56%) plus (B) CCEP III (AI)'s interest in the SkyTerra shares held by the Columbia Funds, collectively (2.98%) multiplied by the foreign ownership of CCEP III (AI) (0.0%) plus (C) CCI III's interest in the SkyTerra shares held by the Columbia Funds, collectively (13.30%) multiplied by the foreign ownership of CCI III (0.0%) plus (D) CCEI III's interest in the SkyTerra shares held by the Columbia Funds, collectively (0.19%) multiplied by the foreign ownership of CCEI III (0.0%) plus (E) CCEP III (Cayman)'s interest in the SkyTerra shares held by the Columbia Funds, collectively (29.61%) multiplied by the foreign ownership of CCEP III (Cayman) (100%).

²⁷ One of the Columbia Funds is organized in the Cayman Islands. The Commission previously has determined that the Cayman Islands are considered a WTO Member state for purposes of foreign ownership analyses. See, e.g., *Cable & Wireless USA, Inc.*, Order, Authorization and Certificate, 15 FCC Rcd 3050, 3052 (IB 2000) ("We defer to the opinion provided to us by the U.S. Department of State and therefore treat Bermuda as a WTO Member for the purposes of applying the proper entry standard to this Application. Accordingly, we apply the open entry standard and the rebuttable presumption that the Application does not pose any concern that would justify denial of the Application on competition grounds."); *Bell Atlantic New Zealand Holdings, Inc.*, 18 FCC Rcd 23140, ¶ 25 (2003) ("In this case, 100 percent of the equity and voting interests in Pacific Telecom would be held by and through Prospector, a holding company incorporated in the Cayman Islands, a territory of the United Kingdom, which, in turn, is a WTO Member country.").

Spectrum Funds. The Spectrum Funds are Spectrum Equity Investors IV, L.P. (“Spectrum IV”),²⁸ Spectrum Equity Investors Parallel IV, L.P. (“Spectrum Parallel IV”),²⁹ and Spectrum IV Investment Managers’ Fund, L.P. (“Spectrum IV Managers”).³⁰ Each of the Spectrum Funds is organized under the laws of the United States.

The Spectrum Funds currently hold a 0.72% equity and 2.33% voting interest in MSV through their 0.76% equity and 2.33% voting interest in SkyTerra. Foreign individuals and entities associated with the Spectrum Funds presently account for 19.65% of the equity and voting interests in the Spectrum Funds³¹ and 0.15% of the equity (19.65% x 0.76%) and 0.46% (19.65% x 2.33%) of the voting interests in SkyTerra. Thus, foreign individuals and entities presently hold 0.14% of the equity (0.15% x 95.08%) and 0.46% of the voting

²⁸ Spectrum IV is a Delaware limited partnership. Non-U.S. limited partners account for 19.99% of the equity of this fund. U.S. limited partners account for 80.01% of the equity of this fund. Spectrum IV is ultimately controlled by individuals that are citizens of the United States. *See* Attachment C hereto for information regarding the categories of foreign investors in Spectrum IV.

²⁹ Spectrum Parallel IV is a Delaware limited partnership. Non-U.S. limited partners account for 2.07% of the equity of this fund. U.S. limited partners account for 97.93% of the equity of this fund. Spectrum Parallel IV is ultimately controlled by individuals that are citizens of the United States. *See* Attachment C hereto for information regarding the categories of foreign investors in Spectrum Parallel IV.

³⁰ Spectrum IV Managers is a Delaware limited partnership. U.S. limited partners account for 100.0% of the equity of this fund. Spectrum IV Managers is ultimately controlled by individuals that are citizens of the United States. *See* Attachment C hereto for information regarding the categories of foreign investors in Spectrum IV Managers.

³¹ The 19.65% aggregate foreign ownership of the Spectrum Funds is calculated as follows: (A) Spectrum IV’s relative ownership of SkyTerra shares owned by the Spectrum Funds (98.25%) multiplied by the foreign ownership of Spectrum IV (19.99%) plus (B) Spectrum Parallel IV’s relative ownership of the SkyTerra shares owned by the Spectrum Funds (0.58%) multiplied by the foreign ownership of Spectrum Parallel IV (2.07%) plus (C) Spectrum IV Managers’ relative ownership of the SkyTerra shares owned by the Spectrum Funds (1.17%) multiplied by the foreign ownership of Spectrum IV Managers (0.0%).

interests in MSV. All of the foreign interests in the Spectrum Funds are attributable to WTO Member countries.³²

Harbinger Funds. The Harbinger Funds are Harbinger Capital Partners Master Fund I, Ltd. (“Master Fund”) and Harbinger Capital Partners Special Situations Fund, L.P. (“Special Fund”). Master Fund is an exempted company organized under the laws of the Cayman Islands, a WTO Member country.³³ Special Fund is a Delaware limited partnership.³⁴

The Harbinger Funds currently hold a 5.91% equity and 19.19% voting interest in MSV through their 6.21% equity and 19.19% voting interest in SkyTerra, collectively.

Foreign individuals and entities presently account for 92.26% of the equity and voting

³² Certain of the investors in the Spectrum Funds are organized in, or have their principal place of business in, Bermuda or the Cayman Islands. *See* note 27 *supra*.

³³ Approximately 82% of the voting shares of Master Fund are owned by Harbinger Capital Partners Offshore Fund I, Ltd., a Cayman Islands entity. The remaining 18% of the voting shares of Master Fund are owned by Harbinger Capital Partners Fund I, L.P., a Delaware limited partnership. The Master Fund has a board of directors that has delegated broad investment management authority under an investment management agreement to Harbinger Capital Partners Offshore Manager, LLC (“Master Fund Manager”), a Delaware limited liability company. The Master Fund Manager acts as the Master Fund’s investment manager and makes investment decisions on its behalf pursuant to contractually delegated authority. Nevertheless, because Master Fund is organized in the Cayman Islands, this analysis assumes that 100% of the interests in SkyTerra held by Master Fund are attributable to foreign individuals or entities. *See* Attachment D for principal place of business showings for the Harbinger Funds referenced herein that are organized in countries other than the United States.

³⁴ The general partner of Special Fund is Harbinger Capital Partners Special Situations GP, LLC (“Special Fund GP”), a Delaware limited liability company. Special Fund GP has management control over Special Fund and is ultimately controlled by individuals that are citizens of the United States. The limited partnership interests in Special Fund are held by several limited partners. These limited partners have no ability to control or be involved in the day-to-day business operations, activities or decisions of Special Fund. U.S. limited partners of Special Fund account for approximately 29.65% of the equity of Special Fund. The sole non-U.S. limited partner of Special Fund, a Cayman Islands limited partnership, accounts for approximately 70.35% of the equity of Special Fund. The general partner of the sole non-U.S. limited partner of Special Fund is a Delaware LLC, which in turn is ultimately controlled by a corporation organized under the laws of the United States.

interests in the Harbinger Funds³⁵ and 5.73% of the equity (92.26% x 6.21%) and 17.7% (92.26% x 19.19%) of the voting interests in SkyTerra. Thus, foreign individuals and entities associated with the Harbinger Funds presently hold 5.45% of the equity (5.73% x 95.08%) and 17.7% of the voting interests in MSV. All of the foreign interests in the Harbinger Funds are attributable to WTO Member countries.³⁶

Former MSV Minority Investors.³⁷ The Former MSV Minority Investors are comprised of two individuals, five private equity funds, and one institutional investor. The individuals, the institutional investor, and four of the private equity funds are citizens of, or organized in, the United States.³⁸ One private equity fund is organized in the Cayman Islands but has a principal place of business in the United States.³⁹ Foreign individuals and entities presently hold 25% of the interests of the Former MSV Minority Investors.

The Former MSV Minority Investors collectively hold a 3.87% equity and 12.57% voting interest in MSV through their 4.07% equity and 12.57% voting interests in SkyTerra.⁴⁰ Foreign individuals or entities presently account for 25.0% of the equity and voting interests

³⁵ The 92.26% aggregate foreign ownership of the Harbinger Funds is calculated as follows: (A) Master Fund's interest in the SkyTerra shares held by the Harbinger Funds, collectively (73.91%), multiplied by the foreign ownership of Masters Fund (100%) plus (B) Special Fund's interest in the SkyTerra shares held by the Harbinger Funds, collectively (26.09%), multiplied by the foreign ownership of Special Fund (70.35%).

³⁶ Certain of the investors in the Harbinger Funds are organized in, or have their principal place of business in, the Cayman Islands. See note 27 *supra*.

³⁷ See note 2 *supra*.

³⁸ SkyTerra determined the country of incorporation and the ultimate controlling party of the institutional investor based on publicly-available filings with the United States Securities and Exchange Commission.

³⁹ The world headquarters of this fund is located in New York. The fund's tangible properties and greatest sales and/or revenues also are located in New York. The officers of the fund are citizens of the United States and the directors are citizens of Nassau, Bahamas.

⁴⁰ Each of the Former MSV Minority Investors holds less than 5% of the equity and voting interests in SkyTerra.

in the Former MSV Minority Investors and 1.02% of the equity (25.0% x 4.07%) and 3.14% of the voting (25.0% x 12.57%) interests in SkyTerra. Thus, foreign individuals and entities associated with the Former MSV Minority Investors presently hold 0.97% of the equity (1.02% x 95.08%) and 3.14% of the voting interests in MSV. All of the foreign interests in the Former MSV Minority Investors are attributable to WTO Member countries.

BCE. BCE is a publicly-traded corporation organized under the laws of Canada.⁴¹ In the Declaratory Ruling, the Bureau approved TMI and/or BCE and their Canadian shareholders to hold indirectly up to and including 40% of the equity and voting interests in MSV.⁴² BCE currently holds a 21.13% equity interest in MSV through its 22.22% interest in

⁴¹ Some of BCE's shares are held directly and some are held in street name. For the shares that are held directly, BCE determined the citizenship of its shareholders based upon the shareholder's address of record. The majority of BCE shares registered in street name are held by Cede & Company ("CEDE"), a U.S.-based depository, and CDS, a Canadian-based depository. To determine the citizenship of shares held, BCE relied on information furnished by the two aforementioned depositories, who are registered holders of BCE common shares. BCE makes the assumption that all CEDE participants are citizens of countries other than Canada or the United States with the exception of the CDS position within CEDE. BCE also contacts the largest CDS participants directly in order to determine their respective Canadian and foreign share positions.

As of December 31, 2006, 85.9% of BCE's equity and voting interests were held, directly or indirectly, by individuals that are citizens of Canada or by entities that are organized under the laws of Canada. 14.0% of BCE's equity and voting interests were held, directly or indirectly, by U.S. citizens or by entities that are organized under the laws of the United States. 0.1% of BCE's equity and voting interests were held, directly or indirectly, by foreign individuals that are citizens of, or foreign entities that are organized under the laws of, other WTO Member countries. None of the equity or voting interests in BCE were held directly or indirectly by citizens of non-WTO Member countries, or by entities that are organized in, or have their principal places of business in, non-WTO member countries.

⁴² *Declaratory Ruling*, ¶ 46. See also, *Motient Services Inc., TMI Communications and Company LP, and Mobile Satellite Ventures LLC*, Order and Authorization, File No. SAT-ASG-20010302-00017 et al. (DA 01-2732) (Nov. 21, 2001) (authorizing TMI and/or BCE and their Canadian shareholders to hold indirectly up to and including 40% of the equity and voting interests in MSV).

SkyTerra.⁴³ Non-Canadian, non-U.S. individuals or entities presently account for 0.1% of the equity and voting interests in BCE and 0.02% of the equity interests (0.1% x 22.22%) in SkyTerra. Thus, non-Canadian, non-U.S. individuals or entities associated with BCE presently hold 0.02% of the equity (0.02% x 95.08%) interests in MSV. All of the non-Canadian, non-U.S. interests in BCE are attributable to WTO Member countries.

Motient. Motient is a publicly-traded corporation organized under the laws of the United States.⁴⁴ Motient currently holds a 37.40% equity interest in MSV through its 39.33%

⁴³ BCE holds only non-voting SkyTerra stock and thus does not have a voting interest in SkyTerra or MSV.

⁴⁴ For purposes of determining Motient's foreign ownership interest in MSV through SkyTerra, this analysis considers the foreign ownership interests in Motient's issued and outstanding common and preferred shares collectively. Most of Motient's common and preferred shares are held in street name. Motient has relied on information furnished by Automatic Data Processing, Inc. ("ADP"), a provider of securities-related services, in order to determine how many of the shares held in street name are foreign-owned.

When a shareholder opens a brokerage account, it signifies whether it is willing for the broker to provide shareholder-specific information to the company. Shareholders that are willing to have shareholder-specific information provided are known as non-objecting beneficial owners, and shareholders that are not willing to have shareholder-specific information provided are known as objecting beneficial owners.

A large percentage of the beneficial owners of the Motient shares that are held in street name are objecting beneficial owners. Although Motient has no way of obtaining shareholder-specific information concerning the shares held by objecting beneficial owners, ADP is permitted to provide on a cumulative basis a state-by-state breakdown of how many street name shares are associated with addresses in each state. The breakdown is based on the addresses that are on the brokers' records for the beneficial owners of street name shares.

This geographical breakdown is the best information that is available to Motient concerning the nationality of the beneficial owners. Motient classified the number of street name shares that are covered by the state-by-state breakdown as U.S.-owned, and it classified the number of street name shares that are not covered by the state-by-state breakdown as foreign-owned.

For information regarding Motient's specific foreign ownership calculations, see August 22 Foreign Ownership Letter, at 4-5; August 31, 2006 Foreign Ownership Letter, at 6-9. Motient has informed Petitioners that, based on preferred stock information provided by ADP after the August 31, 2006 Foreign Ownership Letter was submitted, the foreign ownership percentage when considering Motient's common and preferred stock in the aggregate has been recalculated as 18.5%.

interest in SkyTerra.⁴⁵ Foreign individuals or entities presently account for 18.5% of the equity interests in Motient and 7.28% of the equity interests (18.5% x 39.33%) in SkyTerra. Thus, foreign individuals and entities associated with Motient presently hold 6.9% of the equity (7.28% x 95.08%) interests in MSV.

Approximately 7.7% of Motient's shares are attributable to foreign ownership in WTO Member countries; another 10.8% of Motient's shares are attributable to foreign ownership in non-WTO member countries. Thus, foreign individuals or entities from non-WTO Member countries presently account for 0.79% of the equity (10.8% x 7.28%) interests in SkyTerra and 0.75% of the equity (0.79% x 95.08%) interests in MSV.

B. Motient's Direct Interest in MSV

Motient holds a 4.46% direct equity interest (on an undiluted basis) in MSV. Motient does not hold any voting interest in MSV. Foreign individuals or entities presently account for 18.5% of Motient's issued and outstanding common and preferred shares and 17.3% of Motient's issued and outstanding common shares. As a result, foreign individuals or entities presently hold 0.83% of the equity (18.5% of Motient's issued and outstanding common and preferred shares x 4.46% direct interest in MSV LP) and 0.77% of the voting (17.3% of Motient's issued and outstanding common shares x 4.46% direct interest in MSV LP) interests of MSV through Motient's direct interest in MSV.⁴⁶

⁴⁵ Motient holds only non-voting SkyTerra stock and thus does not have a voting interest in SkyTerra or MSV.

⁴⁶ See *Declaratory Ruling*, at ¶ 41 and note 114. In the Declaratory Ruling, the Bureau calculated Motient's direct foreign equity interest in MSV by multiplying the percentage of foreign-held shares in Motient (which, at the time, represented 29% of Motient's issued and outstanding common and preferred shares) by Motient's direct limited partnership interest in MSV LP (which, at

III. GRANT OF THIS PETITION IS IN THE PUBLIC INTEREST

In its *Foreign Participation Order*, the Commission adopted an open entry standard for investors from WTO-member states and a presumption that investment from such entities is in the public interest.⁴⁷ The open entry standard applies to licenses issued under Sections 214 and 308 of the Act, among other licenses.⁴⁸

There is a strong presumption that indirect foreign ownership by entities whose home markets are in countries that are members of the WTO serves the public interest.⁴⁹ The Commission determined that the public interest would be served by permitting such foreign ownership, in part, because:

[R]emoving barriers to entry and focusing on competitive safeguards will promote effective competition in the U.S. telecommunications services market by removing unnecessary regulation and barriers to entry that can stifle competition and deprive U.S. consumers of the benefits of lower prices, improved service quality, and service innovations.⁵⁰

the time, was 19.2%). The Bureau found that it had insufficient information to determine whether or to what extent MSV LP's limited partners have voting rights in MSV GP and, as a result, attributed to Motient a direct voting interest in MSV. The Bureau calculated Motient's direct foreign voting interest by multiplying the percentage of foreign-held voting shares in Motient (17.3% of Motient's issued and outstanding common stock) by Motient's direct limited partnership interest in MSV LP (which, at the time, was 19.2%).

⁴⁷ See *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, Report and Order and Order on Reconsideration, FCC 97-398, 12 FCC Rcd 23891, 23919-21, ¶¶ 33 *et seq.*; ¶ 50 *et seq.* 61-66 (1997) ("*Foreign Participation Order*"), Order on Reconsideration, 15 FCC Rcd 18158 (2000).

⁴⁸ *Foreign Participation Order*, at ¶ 29.

⁴⁹ See *Foreign Participation Order*, 12 FCC Rcd at 23913 (1997) ("We therefore adopt, as a factor in our public interest analysis, a rebuttable presumption that applications for Section 214 authority from carriers from WTO Members do not pose concerns that would justify denial of an application on competition grounds. We also adopt a rebuttable presumption that such competitive concerns are not raised by applications to land and operate submarine cables from WTO Members or by indirect ownership by entities from WTO members of common carrier and aeronautical radio licensees under Section 310(b)(4) of the Act.")

⁵⁰ *Foreign Participation Order*, 12 FCC Rcd at 23897.

If an entity that controls common carrier licensees, among other authorizations, is owned in part by entities from non-WTO-member states, the Commission still permits up to 100% foreign ownership unless the interest attributable to entities from non-WTO member states exceeds 25%.⁵¹

In the instant case, MSV is owned and controlled by SkyTerra, which is a publicly-traded company organized under the laws of the United States. Foreign individuals and entities presently hold 20.12% of the equity and 33.91% of the voting interests in SkyTerra and thus hold 19.13% of the equity and 33.91% of the voting interests in MSV through SkyTerra. Foreign individuals and entities associated with Motient hold 0.83% of the equity and 0.77% of the voting interests of MSV through Motient's direct interest in MSV.⁵²

As demonstrated herein, the vast majority of these foreign interests are attributable to WTO-member countries.⁵³ Specifically, each of the investors in the Apollo Funds, the Columbia Funds, and the Spectrum Funds is organized in, or has its principal places of business in, a WTO country. Master Fund and the sole non-U.S. limited partner of Special Fund are organized in the Cayman Islands, a WTO Member country, and have their principal places of businesses in WTO Member countries. The only foreign-organized investor in the

⁵¹ *Id.*, at 23940; see also *Global Crossing Ltd. and Frontier Corp., Applications for Transfer of Control Pursuant to Sections 214 and 310(d) of the Communications Act*, Memorandum Opinion and Order, 14 FCC Rcd 15911, 15917 (IB, WTB & CCB 1999) (permitting indirect ownership by a Bermuda company because "section 310(b)(4) is not otherwise implicated under the public interest analysis adopted in the Foreign Participation Order where, as here, non-WTO investment[s] in the ultimate parent company [do] not exceed 25 percent").

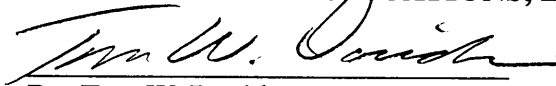
⁵² A Canadian citizen holds 0.01% of the equity interests in MSV through this citizen's direct interest in MSV LP. See note 11 *supra*. This analysis attributes a 0.01% voting interest in MSV through this citizen. See note 46 *supra*.

⁵³ Less than 1% of the foreign interests in MSV are attributable to non-WTO Member countries.

indirect equity and/or voting interest from foreign individuals or entities without seeking further Commission approval under Section 310(b)(4), subject to standard conditions.

Respectfully submitted,

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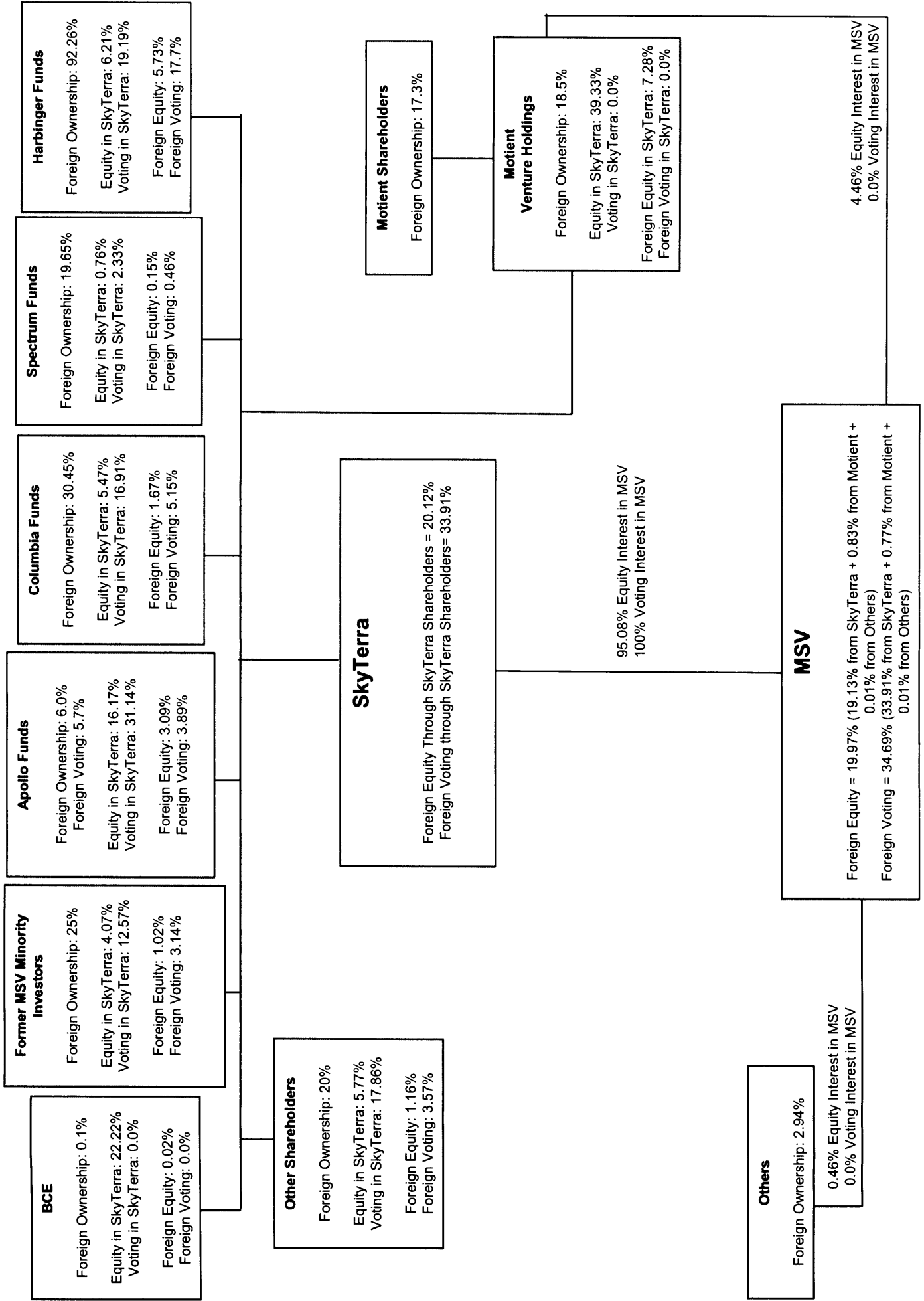
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*Counsel to Mobile Satellite Ventures Subsidiary
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Dated: March 14, 2007

Former MSV Minority Investors is organized in the Cayman Islands and has its principal place of business in the United States. All of the shares held by BCE's non-U.S., non-Canadian shareholders are attributable to WTO Member countries. Finally, the vast majority of Motient's stock is attributable to WTO Member countries. Because of the WTO status of each of these investors, the indirect ownership of MSV by the above-named companies should not raise any competitive concerns with the Commission. Consequently, the Bureau should issue a declaratory ruling that permits (i) indirect foreign ownership of MSV by the above-name companies; (ii) direct foreign ownership of MSV by Motient; and (iii) MSV, through SkyTerra and Motient, to have up to and including an additional aggregate 25%

Attachment A: Foreign Ownership of MSV and SkyTerra



**ATTACHMENT B:
FOREIGN INTERESTS IN THE COLUMBIA FUNDS**

<i>Columbia Capital Equity Partners III (Cayman), L.P.</i>		
<i>Category of Investor</i>	<i>Aggregate % Equity</i>	<i>Country of Organization/ Principal Place of Business</i>
Non-U.S. high net worth Individuals	0.01%	Citizens of Canada.
Government agencies (non-pension) of WTO member countries	11.72%	Organized in Cayman Islands.
Non-U.S. banks, pension/employee benefit plans, insurance companies	7.67%	Organized in Kuwait, Japan, and Cayman Islands.
Non-U.S. foundations/endowments/trusts	0.00%	
Other institutional investors with principal place of business in WTO-member countries	25.88%	Principal place of business in Australia, Ireland, Bermuda, Luxembourg, Netherland Antilles, Kuwait, Mauritius, Channel Islands, Switzerland, Panama, British Virgin Islands, and Cayman Islands.

<i>Columbia Capital Equity Partners III (QP), L.P.</i>		
<i>Category of Investor</i>	<i>Aggregate % Equity</i>	<i>Country of Organization/ Principal Place of Business</i>
Non-U.S. high net worth Individuals	0.00%	
Government agencies (non-pension) of WTO member countries	0.00%	
Non-U.S. banks, pension/employee benefit plans, insurance companies	0.00%	
Non-U.S. foundations/endowments/trusts	0.00%	
Other institutional investors with principal place of business in WTO-member countries	1.56%	Principal place of business in Luxembourg.

**ATTACHMENT C:
FOREIGN INTERESTS IN THE SPECTRUM FUNDS**

<i>Spectrum Equity Investors IV, L.P.</i>		
<i>Category of Investor</i>	<i>Aggregate % Equity</i>	<i>Country of Organization/ Principal Place of Business</i>
Non-U.S. high net worth Individuals	0.05%	Citizens of the United Kingdom.
Government agencies (non-pension) of WTO member countries	1.30%	Organized in Singapore.
Non-U.S. banks, pension/employee benefit plans, insurance companies	0.26%	Organized in Japan.
Non-U.S. foundations/endowments/trusts	2.08%	Organized in the United Kingdom.
Other institutional investors with principal place of business in WTO-member countries	16.30%	Organized in Cayman Islands, Germany, the United Kingdom, British Virgin Islands, Luxembourg, Panama, Bermuda, Guernsey, and Canada.

<i>Spectrum Equity Investors Parallel IV, L.P.</i>		
<i>Category of Investor</i>	<i>Aggregate % Equity</i>	<i>Country of Organization/ Principal Place of Business</i>
Non-U.S. high net worth Individuals	2.07%	Citizens of the United Kingdom.
Government agencies (non-pension) of WTO member countries	0.00%	
Non-U.S. banks, pension/employee benefit plans, insurance companies	0.00%	
Non-U.S. foundations/endowments/trusts	0.00%	
Other institutional investors with principal place of business in WTO-member countries	0.00%	

**ATTACHMENT D:
HARBINGER CAPITAL PRINCIPAL PLACE OF BUSINESS SHOWINGS**

Harbinger Capital Partners Master Fund I, Ltd.

- (i) Country of organization:
CAYMAN ISLANDS
- (ii) Citizenship of investment principals, officers and directors:
UNITED STATES, IRELAND, UNITED KINGDOM
- (iii) Location of world headquarters:
IRELAND
- (iv) Location of tangible properties:
N/A
- (v) Location of greatest sales and/or revenues:
N/A

Harbinger Capital Partners Offshore Fund I, Ltd.

- (i) Country of organization:
CAYMAN ISLANDS
- (ii) Citizenship of investment principals, officers and directors:
UNITED STATES, IRELAND, UNITED KINGDOM
- (iii) Location of world headquarters:
IRELAND
- (iv) Location of tangible properties:
N/A
- (v) Location of greatest sales and/or revenues:
N/A

Harbinger Capital Partners Special Situations Offshore Fund, Ltd.

- (i) Country of organization:
CAYMAN ISLANDS
- (ii) Citizenship of investment principals, officers and directors:
UNITED STATES
- (iii) Location of world headquarters:
IRELAND
- (iv) Location of tangible properties:
N/A
- (v) Location of greatest sales and/or revenues:
N/A