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May 13, 2008

*VIA HAND DELIVERY*

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 Twelfth Street, SW  
Washington, D.C. 20554

FILED/ACCEPTED  
MAY 13 2008  
Federal Communications Commission  
Office of the Secretary


Re: ISP-PDR-20080229-00004  
TerreStar Networks Inc. Petition for Declaratory Ruling  
*Notice of Ex Parte Presentation*

Dear Ms. Dortch:

On May 12, 2008, Lawrence R. Krevor, Vice President, Government Affairs – Spectrum, Sprint Nextel Corporation (Sprint Nextel), Charles Logan, counsel for Sprint Nextel, and I met with Susan O’Connell, Jodi Cooper, Howard Griboff, and Francis Gutierrez of the International Bureau. During the meeting, Sprint Nextel described the attached list of questions regarding the petition for declaratory ruling filed by TerreStar Networks Inc. (TerreStar) in the above-reference proceeding. Sprint Nextel urged the Commission to require TerreStar to answer these questions and provide a complete and accurate record concerning its ownership structure and controlling interests.

Sprint Nextel is filing an original and one copy of this letter for inclusion in the public record of this proceeding pursuant to section 1.1206(b)(2) of the Commission’s rules. 47 C.F.R. § 1.1206(b)(2); *see also* Public Notice, Report No. TEL-01245NS (March 13, 2008) (designating proceeding as “permit but disclose”).

Sincerely,

  
Trey Hanbury  
Director, Government Affairs

Attachment

cc (by email, with attachment):

Susan O’Connell      Jodi Cooper  
Howard Griboff      Francis Gutierrez  
Douglas I. Brandon, TerreStar Networks Inc.  
Joseph A. Godles, Counsel for TerreStar Networks Inc.

**Questions Regarding TerreStar Networks, Inc.'s  
Petition for Declaratory Ruling Pursuant to Section 310(b)(4)  
(File No. ISP-PDR-20080229-00004)**

1) ***Why do SEC and FCC IB filings show investment levels in TerreStar that differ from those reported in TerreStar's petition for declaratory ruling ("PDR")?*** — Public SEC filings made by TerreStar Corporation, the controlling entity of the license applicant TerreStar Networks, and an FCC filing made by Harbinger, its major investor, appear to show investment levels wholly different from the figures reported in the PDR. Compare:

- The PDR, p. 5, with the TerreStar Corporation 10-K dated March 31, 2008 ("the 10-K"), p. 38, which states as follows:

As of February 7, 2008, funds affiliated with Harbinger Capital Partners owned an aggregate of 41 million shares or 44.6% of our common stock, as reported on their Schedule 13 D/A filed with the SEC.

- The PDR, p. 5, with the Harbinger Amended Petition for Expedited Action for Declaratory Ruling, File No. ISP-PDR-20080111-00001, as amended on January 16, 2008, p. 6, which states as follows:

[T]he Master Fund has a 30.00% equity interest in TerreStar [Corporation], and the Special Fund has a 11.05% equity interest in TerreStar [Corporation].

2) ***Why does a TerreStar FCC WTB filing show investment levels different from those reported in the PDR?*** — The numbers in the PDR differ from the levels reported to the Wireless Bureau in TerreStar Corporation's March 12, 2008, Form 602 ownership report. Examples:

- The Form 602 does not list EchoStar as a 10% or greater interest holder in TerreStar Corporation; and
- The Form 602 shows a 29.57% and 10.89% interest for the Harbinger Capital Partners Master Fund I, Ltd., and the Harbinger Capital Partners Special Situation Fund, L.P., respectively, compared to the 23.06% and 8.49% equity interests reported in the PDR

3) ***Why has TerreStar failed to disclose a spectrum transaction with Harbinger?*** — The 10-K references a spectrum transaction involving Harbinger entities, which is not disclosed in the PDR. Has the effect of this transaction already been factored into the level of the Harbinger funds' investment, or will it affect future investment? See the 10-K, p. 69, which states as follows:

On February 5, 2008, we also entered into a Spectrum Contribution Agreement (the “Harbinger Contribution Agreement”), with Harbinger, which provides that, following shareholder approval, Harbinger will assign to TerreStar Corporation its rights to certain 1.4 GHz spectrum with an option to purchase these licenses in exchange for the issuance of 1.2 million shares of TerreStar Corporation’s Series E Junior Participating Preferred Stock, par value \$0.01 per share, convertible into 30 million shares of TerreStar Corporation common stock (the “Junior Preferred”).

4) ***Does Harbinger control TerreStar?*** — As detailed in the 10-K, Harbinger holds substantial equity and voting rights in TerreStar Corporation, substantial amounts of debt, including convertible debt, spectrum acquisition arrangements and a single Series D Preferred Share. As noted above, Harbinger may (or may soon) also hold convertible Series E shares. These holdings, individually or together, give Harbinger special approval rights and board membership in TerreStar Corporation and its controlled subsidiary, TerreStar Networks, the applicant. See the 10-K, pp. 15-16; 69-71; see also TerreStar Corporation 10-K/A, filed April 29, 2008, p. 21. The connections between Harbinger and TerreStar Networks and its controlling entity warrant Commission review to determine whether Harbinger is effectively a control party of the applicant and an unauthorized control party of radio licenses already held by TerreStar Networks.<sup>1</sup> In fact, the relationships appear to be so intertwined that TerreStar Corporation made the following disclosure of regulatory risk in the 10-K, at p. 38:

Accordingly, these funds are able to significantly influence us through their ability to heavily influence the outcome of election of our directors, amendments to our certificate of incorporation and by-laws and other actions requiring the vote or consent of stockholders. There is no assurance that the interest of Harbinger will be aligned with those of our other investors, and Harbinger may make decisions that adversely impact our stockholders. In addition to Harbinger’s ownership interest in us, Harbinger also reports significant ownership interest in SkyTerra and Inmarsat.

5) ***Does TerreStar Corporation have a controlling entity?*** — In a *de facto* transfer lease notification filed March 13, 2008 (involving 1.4 GHz spectrum licensed to an EchoStar entity, Port L.L.C.), TerreStar Corporation answered question 156(a) on Form 608 as “Yes,” thereby indicating that it [TerreStar Corporation] is controlled by another corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens. (See File No. 0003345087)

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<sup>1</sup> See, e.g., *Applications of NextWave Personal Communications, Inc. for various C-Block Broadband PCS Licenses*, Memorandum Opinion and Order, 12 FCC Rcd 2030, 2043 ¶ 33 (1997) (concluding that certain instruments nominally characterized as debt should be treated as equity, causing NextWave to exceed the foreign ownership benchmark under Section 310(b)(4)).

This is inconsistent with the PDR, which does not indicate that TerreStar Corporation is controlled by any entity. If the Form 608 is correct, it would suggest that a transfer of control of TerreStar Corporation and TerreStar Networks has occurred.

**6) *When did the level of indirect foreign investment in TerreStar Networks exceed the statutory threshold?*** — The PDR states, at page 4, that TerreStar is requesting approval of ownership changes that “occurred between the filing of the MET/ATC applications and the filing of this petition for declaratory ruling.” TerreStar’s application for ATC authority was filed on September 7, 2007. Yet TerreStar had already reported to the FCC in a July 13, 2007, letter that the foreign ownership level of its majority owner [presumably TerreStar Corporation] “may now be in excess of 25 percent.” Thus, it would appear that there may have been two ownership changes – one before July 2007, and one after September 7, 2007. Has the Commission been informed of each and every change affecting foreign ownership?

**7) *Are Goldman shares properly classified?*** — The PDR asserts specific percentages of U.S. and WTO foreign ownership attributable to the Goldman Sachs Group, Inc. (“Goldman”). However, the FCC has previously noted, on more than one occasion, that Goldman does not release citizenship information related to its investors. As a result, the FCC has determined that future investments by Goldman in particular entities would be treated as unidentified foreign investment, which may be calculated as non-WTO ownership.<sup>2</sup> Based on this history, the Bureau should probe deeper into the Goldman percentages proffered by TerreStar.

**8) *Have the various rights of Harbinger and EchoStar to acquire additional stock already been exercised? If not, should they still be factored in?*** — As noted above, according to the 10-K, Harbinger (and EchoStar) may hold debt instruments convertible into stock, and may otherwise be entitled to increase their equity holdings in connection with certain transactions. Have these conversions taken place, or, if they have not, are they expected to take place in the near future, so that the effect on foreign ownership and voting power should be considered now? While the Commission normally does not calculate foreign ownership or voting on the basis of “fully diluted” holdings – *i.e.*, as if options, warrants of convertible debt are actually converted – they should be considered in the context of the PDR if they are expected to take place in the near future.

**9) *Does TerreStar’s Analysis Properly Reflect the FCC’s Insulation Policy?*** — The Bureau should ensure that TerreStar identifies and documents in every instance whether limited partners

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<sup>2</sup> See *TelCove, Inc.*, Order and Declaratory Ruling, 21 FCC Rcd 3982 (2006) at ¶ 24 (determining that any future investment by Goldman would be treated “as unidentified interests, unless and until Goldman Sachs ... demonstrate[s] the equity and voting interests ... are properly ascribed to the United States or another WTO Member country”); see also International Authorizations Granted: Section 214 Applications (47 C.F.R. § 63.18); Section 310(b)(4) Requests, Report No. TEL-01144, Public Notice, DA 07-2041 at 2-3 (rel. May 10, 2007) (granting a Petition for Declaratory Ruling under Section 310(b)(4) by SunCom Wireless Holdings, Inc., but finding that any future investment by Goldman would be treated as foreign).

are insulated from influencing general partners, in accordance with FCC policies.<sup>3</sup>

10) ***Why does TerreStar's analysis fail to report the 14% investment in TerreStar Networks held by other investors?*** — The PDR did not disclose that SkyTerra Communications, Inc. is an 11% investor in TerreStar Networks. *See* the 10-K, p.1. Any foreign investment in SkyTerra must be flowed through to TerreStar Networks. Notably, SkyTerra's investors include both TerreStar Corporation (which holds a 42% interest in SkyTerra) and Harbinger. *Id.* Any direct or indirect foreign investment in any other investor in SkyTerra must also be flowed through to TerreStar Networks. In addition, the PDR did not disclose the identity of the remaining investment in TerreStar Networks. The citizenship of those investors must be disclosed.

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<sup>3</sup> *See, e.g., Foreign Ownership Guidelines for FCC Common Carrier and Aeronautical Radio Licenses*, 19 FCC Rcd 22612, 22628-30 (2004) (insulation is found where it is “demonstrated that the foreign limited partners are prohibited by the relevant partnership agreement from participating in the day-to-day management of the partnership, and that only the usual and customary investor protections are contained in the limited partnership agreement.”).