

March 27, 2009

FILED ELECTRONICALLY

Marlene H. Dortch, Secretary
Federal Communications
Commission
445 12th Street, S.W.
Washington, D.C. 20554

**Re: 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**

Dear Ms. Dortch:

On March 26, 2009, in response to a request from the Commission's staff, a revised, stand-alone narrative was submitted to be associated with the above-referenced applications seeking the Commission's consent to transfer control of SkyTerra Subsidiary LLC. An incorrect version of Annex 1 to Attachment B of the narrative was included with the filing. Please replace the narrative that was filed on March 26 with the attached narrative, which has the correct version of Annex 1.

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Please direct any questions regarding this submission to the undersigned.

Respectfully submitted,

/s/ Henry Goldberg

Henry Goldberg
Joseph A. Godles
Goldberg, Godles, Wiener & Wright
1229 19th Street, N.W.
Washington, DC 20036
*Counsel for the
Harbinger Capital Partners Funds*

/s/ Bruce D. Jacobs

Bruce D. Jacobs
Pillsbury Winthrop Shaw Pittman LLP
2300 N Street, N.W.
Washington, DC 20037-1122
Counsel for SkyTerra Communications, Inc.

cc: Jim Ball (FCC)
Howard Griboff (FCC)
Francis Gutierrez (FCC)
Arthur Lechtman (FCC)
Susan O'Connell (FCC)
Neil Dellar (FCC)
Jodi Cooper (FCC)
Jennifer Balatan (FCC)

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Attachment A List of licenses

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(“SkyTerra”) requested² Federal Communications Commission (“FCC” or “the Commission”) consent to the following transactions:

- (i) the transfer of control of SkyTerra Subsidiary, LLC (“SkyTerra Sub”),³ from SkyTerra (as it is currently controlled) to Harbinger;⁴ and
- (ii) the transfer of control of Inmarsat Hawaii Inc. and Inmarsat, Inc. from the current shareholders of Inmarsat plc (“Inmarsat”)⁵ to Harbinger.⁶

In the version of the Narrative that was filed last August, the parties requested that all of the above-mentioned transfer of control applications be processed as a group. On March 4,

Investment Fund, L.P. (the “Co-Investment Fund”), currently created, but unfunded, may also acquire an interest in SkyTerra as part of a funding vehicle for the Inmarsat transaction. Both the Partners Fund and the Co-Investment Fund are under common control with the Master Fund and the Special Situations Fund. If either the Partners Fund or the Co-Investment Fund would be involved in the purchase of SkyTerra shares that is associated with either transaction, amendment(s) showing a *pro forma* change in ownership would be filed to the appropriate individual applications.

² This narrative is included with each of a series of related applications seeking consent to transfer control of the licenses identified in Attachment A hereto. It is respectfully requested that the applications be processed as a group.

Please note that Question 21 of FCC Form 312 asks whether the licenses that are the subject of the application are common carrier or non-common carrier. Some of the transfer of control applications that the parties are filing on FCC Form 312 include both common carrier and non-common carrier licenses. The electronic filing system, however, does not permit both the common carrier box and the non-common carrier box to be checked, so only the common carrier box was checked.

³ The company names used in this Narrative reflect the fact that various subsidiaries of SkyTerra have changed their names since the date that the original version of this Narrative was filed by replacing “Mobile Satellite Ventures” in the company name with “SkyTerra.”

⁴ Following Commission consent, Harbinger would control SkyTerra, which would, in turn, remain the parent company of SkyTerra, L.P., which wholly owns SkyTerra Sub, as set forth in Section II.A(1) below.

⁵ At the time the original version of this Narrative was filed, there was pending an application requesting Commission consent to the transfer of control of Stratos Global Corporation (“Stratos”) from Robert M. Franklin to Inmarsat. *See* Robert M. Franklin, Trustee, and Inmarsat plc Seek FCC Consent to the Transfer of Control of Stratos Global Corporation, and its Subsidiaries from an Irrevocable Trust to Inmarsat plc, Pleading Cycle Established, Public Notice, IB Docket No. 08-143, 2008 FCC Lexis 5360 (rel Aug. 13, 2008) (the “*Stratos Transfer of Control Application*”). The Stratos Transfer of Control Application subsequently was granted. *See* Memorandum Opinion and Order, DA 09-117 (Int’l Bur., Jan. 16, 2009). Should the Inmarsat/Stratos transaction be consummated, the application for consent to transfer control of Inmarsat to SkyTerra will be amended as appropriate to take the FCC authorizations presently held by Stratos into account.

⁶ At the time the original version of this Narrative was filed, Harbinger had an option to acquire, subject to prior FCC consent, a controlling equity interest in TVCC One Six Holdings LLC (“TVCC”), which had entered into an FCC-approved *de facto* lease of 1670-1675 MHz spectrum with the licensee of that spectrum, OP LLC. It was contemplated at the time that Harbinger would contribute its interest in the lessee to SkyTerra pursuant to a *pro forma* transfer of control. Subsequently, however, it was reported that although Harbinger has exercised its option, it no longer intends to contribute its interest to SkyTerra. *See* letter, dated September 26, 2008, from Joseph A. Godles, counsel for Harbinger, to Marlene H. Dortch, FCC.

2009, however, the parties requested instead, based on changes-in the financial markets and the need to maintain maximum flexibility, that the Commission separate processing of the applications proposing to transfer control of SkyTerra Sub from the applications proposing to transfer control of Inmarsat Hawaii Inc. and Inmarsat, Inc. They also sought expedited processing of the applications proposing to transfer control of SkyTerra Sub.

In light of this development, the initially-filed Narrative has been split into two stand-alone Narratives. The instant version of the Narrative addresses considerations related to the applications proposing to transfer control of SkyTerra Sub, and should be associated with those applications. A contemporaneously-filed version of the Narrative addresses considerations related to the applications proposing to transfer control of Inmarsat Hawaii Inc. and Inmarsat, Inc., and should be associated with those applications. Each of the revised Narratives also takes into account material changes, principally relating to the ownership of Harbinger and SkyTerra, since the original application was filed.⁷

I. INTRODUCTION AND SUMMARY

Two interrelated transactions, both of which are subject to FCC and other regulatory approvals, are contemplated. Initially, and as proposed in the instant narrative and associated transfer of control applications, Harbinger will become SkyTerra's controlling stockholder by exercising warrants to purchase additional SkyTerra common stock and becoming the owner of SkyTerra shares that are currently held in escrow. It is demonstrated in this narrative that giving Harbinger control of SkyTerra is in the public interest. Harbinger's control over SkyTerra will

⁷ On March 4, 2009, the parties filed: (1) two pages from the August 2008 Narrative that had been revised to take into account these ownership changes; and (2) a Narrative limited to the public interest considerations associated with the transfer of control of SkyTerra Sub. Based on subsequent discussions with the staff of the International Bureau, it has been determined in the interest of clarity that two separate, stand-alone versions of the Narrative should be filed. The two versions of the Narrative filed today supersede the Narrative revisions filed on March 4.

also give it control over SkyTerra's operating subsidiary, SkyTerra LP, and SkyTerra LP's wholly-owned FCC licensee subsidiary, SkyTerra Sub.

Subsequently, upon successful conclusion of the offer by SkyTerra, under the control and at the direction of Harbinger, for Inmarsat, SkyTerra will become Inmarsat's sole shareholder. Harbinger will then proceed to merge the operation of Inmarsat and SkyTerra.⁸ This proposed transaction is the subject of separate transfer of control applications, including a separate, stand-alone narrative.

II. DESCRIPTIONS OF THE TRANSACTION

A. The Parties

(1) SkyTerra

SkyTerra Sub is licensed by the Commission to operate AMSC-1 (also known as MSAT-2), an L-band Mobile Satellite Service ("MSS") satellite, at 101.3° W.L., and to launch and operate a replacement satellite for AMSC-1, SkyTerra-1, at the same orbital location. SkyTerra Sub holds an authorization to operate ATC facilities in conjunction with the aforementioned satellites; various fixed and mobile earth stations licenses; Section 214 authorizations; various experimental licenses; and a mobile itinerant license, all associated with the operation and development of the aforementioned satellites and the planned MSS-ATC network.

⁸ Depending upon then-prevailing market conditions and other factors, Harbinger may, and is contractually entitled to, make an offer for Inmarsat independently of SkyTerra, in which case Harbinger, not SkyTerra, would become Inmarsat's sole shareholder. Under this alternative, Sky Terra and Inmarsat would be commonly-controlled by Harbinger. Harbinger would thereafter combine or otherwise coordinate the business operations of SkyTerra and Inmarsat so as to achieve the advantages and public interest benefits described below. For the purposes of this Narrative, however, it has been assumed that SkyTerra will be making the offer for Inmarsat under the control and at the direction of Harbinger.

SkyTerra is a joint venture partner of SkyTerra (Canada), Inc. (“SkyTerra Canada”), which holds various Canadian authorizations to operate its own L-band MSS satellite (MSAT-1) as well as a next generation replacement (SkyTerra-2) for that satellite. SkyTerra and SkyTerra Canada currently provide certain land mobile services in the United States and Canada via their existing satellites. SkyTerra and SkyTerra Canada are developing an integrated satellite-terrestrial communications network, including proceeding with the construction of state of the art replacement satellites, to provide seamless, transparent and ubiquitous wireless coverage of the United States and Canada to consumer handsets. That network will reach both underserved rural areas and heavily-populated areas, providing vital public safety and consumer services. SkyTerra Canada is controlled by BCE, a Canadian corporation. Control of SkyTerra Canada is unaffected by the transactions proposed herein.

SkyTerra is a holding company that wholly owns its operating subsidiary, SkyTerra L.P., a Delaware limited partnership, which in turn wholly owns SkyTerra Sub, a Delaware corporation. The general partner of SkyTerra L.P. is SkyTerra GP Inc., a Delaware corporation which is a wholly-owned subsidiary of SkyTerra. SkyTerra is also a Delaware corporation.

(2) *Harbinger*

The Harbinger Capital Partners Funds are investment funds founded in 2001 by Philip A. Falcone. The Master Fund is an exempted company organized under the laws of the Cayman Islands. The Special Situations Fund is a Delaware limited partnership. A more detailed description of these funds and their ownership structure is set forth in the Declaratory Ruling Petition that is attached to this Narrative as Attachment B. Mr. Falcone, who is a U.S. citizen, has ultimate control of the funds.

Harbinger holds an approximately 49% equity interest and an approximately 48% voting interest in SkyTerra,⁹ plus warrants for additional voting shares of SkyTerra; and the right to acquire additional shares of SkyTerra out of escrow once the Commission has consented to transferring control of SkyTerra Sub to Harbinger.¹⁰ Based upon publicly-available information, Harbinger believes that it currently holds approximately 29% of the issued and outstanding ordinary (voting) shares of Inmarsat and also holds convertible bonds in Inmarsat. In addition, Harbinger owns approximately 31% of the voting shares and approximately 44% of the equity of TerreStar Corporation (“TerreStar”), as well as debt instruments in TerreStar. TerreStar’s (approximately) 88% subsidiary, TerreStar Networks Inc., holds an FCC letter of intent (“LOI”) authorization for the launch and operation in the United States of TerreStar-1, a Canadian-licensed S-band MSS satellite that will serve the United States and Canada. Harbinger does not control TerreStar, nor would any of the proposed transactions give Harbinger control of TerreStar.

In addition to their interests in Inmarsat and TerreStar, the Harbinger Capital Partners Funds have interests in many companies, including minority interests in the following telecommunications and media companies in which Harbinger holds an equity

⁹ These percentages include approximately 2% of SkyTerra’s voting common stock and approximately 14% of SkyTerra’s equity which are currently owned by the Partners Fund and which, as indicated in note 1 hereto, are contemplated to be distributed to the Master Fund and the Special Situations Fund.

¹⁰ 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; (2) non-voting shares amounting to 7.27% of SkyTerra’s total equity that were transferred to Well Fargo Bank, National Association (“Wells Fargo”) and placed in escrow in connection with a September 2008 transaction in which Harbinger acquired SkyTerra shares from TerreStar Corporation; and (3) 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 Wells Fargo acquired them in January and February 2009.

interest¹¹ of 10% or more (and, in each case, less than 25%): Satelites Mexicanos Sa de CV; Leap Wireless; and The New York Times Company.

B. The Transaction

The transfer of control of SkyTerra to Harbinger would occur by the exercise by Harbinger of warrants and/or by other stock acquisition. If Harbinger is allowed to acquire all of the shares to which it currently has rights, it will hold in excess of 77% of the voting common stock of SkyTerra.¹² Harbinger anticipates that in April 2009 and January 2010 it will receive warrants to acquire an additional 21,250,000 shares and 3,750,000 shares, respectively, of the voting common stock of SkyTerra (pursuant to a \$500 million financing facility that Harbinger has made available to SkyTerra LP). Exercising these warrants, in addition to the acquisition of the securities described above, would result in Harbinger holding approximately 81.85% of the voting common stock of SkyTerra.

III. STANDARD FOR REVIEW

The Commission will grant an application for transfer of control when, after considering the benefits and harms to the public interest, on balance grant of the application will serve the public interest, convenience and necessity.¹³ The Commission first must assess whether the proposed transaction complies with the applicable parts of the Communications Act of 1934 and

¹¹ Although neither a voting nor equity interest of 10% or more, for the completion of the record we note that Harbinger also holds approximately \$99.5 million (face value) in convertible bonds in ICO North America, Inc., and 2,398,281 in common shares in ICO Global Communications (Holdings) Limited. An affiliate of these companies holds an LOI authorization from the Commission to operate an S-band MSS satellite in the United States.

¹² This calculation does not include the exercise of warrants to purchase 3,369,656 shares of SkyTerra voting common stock as Harbinger does not anticipate exercising such warrants prior to their expiration in April 2009 due to the fact that such warrants have an exercise price significantly greater than the current trading price of SkyTerra voting common stock.

¹³ See 47 U.S.C. § 310(d) (requiring that transfer of control applications demonstration that the transaction will serve the public interest, convenience and necessity).

with any other applicable statutes, and with the Commission's rules.¹⁴ If so, then the Commission considers whether the transaction would result in any public interest harms "by substantially frustrating or impairing the objectives or implementation of the Act or related statutes."¹⁵ Finally, the Commission engages in a balancing test that weighs the potential public interest benefits against the potential public interest harms of the proposed transaction.¹⁶

IV. THE PROPOSED TRANSACTION COMPLIES WITH THE COMMUNICATIONS ACT AND THE COMMISSION'S RULES, AND PROMOTES RATHER THAN HARMS THE PUBLIC INTEREST

SkyTerra already holds a controlling interest in SkyTerra Sub, which has been approved by the Commission.¹⁷ The FCC qualifications of SkyTerra as presently owned, therefore, are a matter of public record. The qualifications of Harbinger are set forth in: (1) the transfer of control applications with which this Narrative is associated, which cover the FCC authorizations listed in Attachment A hereto; and (2) the Declaratory Ruling Petition that is attached to this Narrative as Attachment B.

¹⁴ See *In the Matter of Application of News Corporation and The DirectTV Group, Inc., Transferors, and Liberty Media Corporation, Transferee, for Authority to Transfer Control*, Memorandum Opinion and Order, 23 FCC Rcd 3265, 3276 (2008) ("*Liberty Media/Direct TV Order*"); see also *SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, 20 FCC Rcd 18290, 18300 (2005) ("*SBC-AT&T Order*"); *Verizon Communications, Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, 20 FCC Rcd 18433, 18442-43 (2005) ("*Verizon-MCI Order*"); *Applications for Consent to the Assignment of Licenses Pursuant to Section 310(d) of the Communications Act from NextWave Personal Communications, Inc., Debtor-in-Possession, and NextWave Power Partners, Inc., Debtor-in-Possession, to Subsidiaries of Cingular Wireless LLC*, 19 FCC Rcd 2570, 2580-81 (2004); *EchoStar Communications Corp., General Motors Corp. and Hughes Electronics Corp., and EchoStar Communications Corp., Hearing Designation Order*, 17 FCC Rcd 20559, 20574 (2002) ("*EchoStar-DIRECTV HDO*").

¹⁵ *Liberty Media/Direct TV Order*, 23 FCC Rcd at 3277.

¹⁶ *Id.* If the Commission determines that it cannot find that the transaction would serve the public interest, or if substantial and material facts remain that must be resolved, the Commission will designate the application for a hearing pursuant to Section 309(e) of the Act. 47 U.S.C. § 309(e).

¹⁷ *In the Matter of 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, 21 FCC Rcd 10198 (2006).

Certain FCC authorizations held by SkyTerra Sub are common carrier radio licenses that are subject to the foreign ownership limits of Section 310(b)(4) of the Communications Act. In connection with these common carrier licenses, the Commission has granted Harbinger interim authority pursuant to Section 310(b)(4) to hold a non-controlling interest of up to 49.99 percent equity and voting interests in SkyTerra.¹⁸ This interim authority is subject to Commission action upon a pending petition for a declaratory ruling seeking the same authority on a permanent basis.¹⁹

In the Declaratory Ruling Petition, authority is sought pursuant to Section 310(b)(4) for Harbinger to hold interests in SkyTerra in excess of the 49.99 percent equity and voting interests that are presently authorized on an interim basis. Subject to a favorable Commission ruling on the Declaratory Ruling Petition, the proposed transfer of control will be in conformity with all applicable provisions of the Communications Act and the Commission's rules.

The proposed transaction raises no national security or law enforcement concerns. SkyTerra Sub/SkyTerra has a long history of cooperating with the United States government on issues of national security, and under Harbinger's control will continue to do so. The parties understand the importance of Executive Branch concurrence that matters of national security and law enforcement will not be compromised by the proposed transaction and the deference the Commission gives to such agencies relative to the same.²⁰ The parties have every expectation that they will be able to satisfy any concerns that these agencies may raise.

¹⁸ *In the Matter of Mobile Satellite Ventures Subsidiary LLC and SkyTerra Communications, Inc.; Petition for Declaratory Ruling under Section 310(b) of the Communications Act of 1934, as Amended; Harbinger Capital Partners Master Fund I, Ltd. and Harbinger Capital Partners Special Situations Fund, L.P.; Petition for Expedited Action for Declaratory Ruling under Section 310(b) of the Communications Act, as Amended*, Order and Declaratory Ruling, 2008 FCC Lexis 2181 (rel. March 7, 2008).

¹⁹ *Id.* at 2008 FCC Lexis *28.

²⁰ *See Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 23919-21 (1997).

Transferring control of SkyTerra Sub to Harbinger will serve the public interest. The proposed transaction does not adversely affect the competitive landscape or the broader goals of the Communications Act in any way. Instead, the proposed transfer of control will enable SkyTerra to conduct its operations more efficiently and effectively, thereby facilitating its efforts to deploy its next-generation satellites and integrated satellite-terrestrial network. Harbinger's investments in SkyTerra already have enabled the latter, in combination with SkyTerra Canada, to go forward with their plans to launch the SkyTerra -1 and SkyTerra -2 satellites. Harbinger's continued investment, and acquisition of a majority stake in SkyTerra, will bring its resources and financial acumen to bear to enable SkyTerra to bring to market advanced services that promise to ring in the era of integrated satellite-terrestrial networks and extend the marketplace for satellite services far beyond their historical bounds.

V. PROCEDURAL MATTERS

A. Pending Applications and Petitions

During the Commission's consideration of these applications and the period required for the consummation of the proposed transactions following approval, SkyTerra Sub may file additional applications or petitions, and the Commission may grant currently pending applications or petitions (the "Interim Period"). Accordingly, consistent with Commission precedent, the applicants request that the Commission, in acting upon these applications, include authority for the transfer of control to Harbinger of (i) all applicable authorizations issued during the Interim Period; and (ii) all applicable applications (including applications for STA), petitions, or other filings that are pending at the time of consummation of the proposed transfer of control.

B. Request for Permit-But-Disclose *Ex Parte* Status

The applicants request that the Commission designate the *ex parte* status of the transfer of control application proceedings as “permit-but-disclose” under the Commission’s rules. *See* 47 C.F.R. §§ 1.1200 *et seq.* Doing so will facilitate the development of a complete record and is consistent with Commission decisions in other similar transactions.²¹

VI. CONCLUSION

For the foregoing reasons, Commission consent to the transfer of control of SkyTerra Sub to Harbinger is hereby requested.

²¹ *See, e.g., Stratos Transfer of Control Proceeding*, 2008 FCC Lexis 5360, DA 08-1659.

Attachment A – List of Licenses

Approval is requested for the transfer of control of the following licenses and authorizations held by SkyTerra Subsidiary LLC (“SkyTerra Sub”):

Licenses Held by SkyTerra Sub:

Licensee	Authorization
	Space Station (including ATC authority)
SkyTerra Sub	AMSC-1
SkyTerra Sub	S2358
	Earth Station (Mobile)
SkyTerra Sub	E990133
SkyTerra Sub	E980179
SkyTerra Sub	E930367
	Earth Station (Fixed)
SkyTerra Sub	E940374
SkyTerra Sub	E930124
SkyTerra Sub	E080030
SkyTerra Sub	E080031
	Section 214 Authorizations
SkyTerra Sub	Domestic 214
SkyTerra Sub	ITC-214-19951215-00023
SkyTerra Sub	ITC-214-19950314-00022
	Experimental Licenses
SkyTerra Sub	WC9XRS XD
SkyTerra Sub	WE2XIF XD
SkyTerra Sub	WE2XJW XD
SkyTerra Sub	WD2XNL XD
SkyTerra Sub	WE2XOD XD
SkyTerra Sub	WE2XOW XD
SkyTerra Sub	WE2XPD XD
	Mobile Itinerant
SkyTerra Sub	WQHL596

ATTACHMENT B

PETITION FOR DECLARATORY RULING

Introduction and Summary

This petition for declaratory ruling (“PDR”)¹ accompanies applications seeking the Commission’s consent to transfer control of SkyTerra Subsidiary LLC (“SkyTerra Sub”) from SkyTerra Communications, Inc. (“SkyTerra”) to Harbinger Capital Partners Master Fund I, Ltd. (“Master Fund”) and Harbinger Capital Partners Special Situations Fund, L.P. (“Special Situations Fund”) (collectively referred to as “Harbinger” or the “Harbinger Funds”).² The parties to the applications respectfully request a declaratory ruling from the Commission, pursuant to Section 310(b)(4) of the Communications Act of 1934, as amended, that it is consistent with the public interest for Harbinger and any commonly-controlled funds³ to own, directly or indirectly, up to 100% of the issued and outstanding stock of SkyTerra, which has a controlling interest in SkyTerra Sub.⁴

In addition, in order to account for the possibility that Harbinger and commonly-controlled funds will hold less than 100% of the issued and outstanding stock of SkyTerra following consummation of the proposed transfer of control,⁵ the parties request a declaratory

¹ This PDR is a revised version of a PDR that was filed on August 22, 2008.

² Contemporaneously filed applications seek the Commission’s consent to transfer control of Inmarsat Hawaii Inc. and Inmarsat, Inc. (collectively, “Inmarsat”). This PDR is attached for informational purposes as Attachment B to the narrative accompanying the Inmarsat transfer of control applications.

³ As stated in the transfer of control applications, it is possible that Harbinger Capital Partners Fund I, L.P. and Harbinger Co-Investment Fund, L.P., which are under the same control as the Master Fund and the Special Situations Fund, will have an ownership interest in SkyTerra.

⁴ SkyTerra wholly owns SkyTerra L.P., a Delaware limited partnership, which wholly owns SkyTerra Sub, a Delaware corporation. SkyTerra Sub holds various common carrier licenses as well as authorizations to provide common carrier services pursuant to Section 214 of the Communications Act.

⁵ It is likely that Harbinger’s interest in SkyTerra will be below 100% and that some or all of the current non-Harbinger shareholders of SkyTerra will continue to have an interest in the company. The precise level of Harbinger’s post-closing interest, however, will depend on market conditions and other factors at closing and therefore cannot be determined at this time. For similar reasons, it is unknown at present what the relative levels of ownership will be as between the Master Fund and the Special Situations Fund. Out of an abundance of caution, the

ruling permitting ownership, subject to the qualification in the sentence that follows, of up to 25% of SkyTerra's equity and voting stock by foreign investors that are not identified in this PDR. The parties are not, however, seeking authority that would permit any foreign investor that is not identified in this PDR to acquire control of SkyTerra, or to acquire an equity and/or voting interest in SkyTerra that exceeds 25%, without obtaining additional approval from the Commission.

The Commission already has made a preliminary determination that it is consistent with the public interest for Harbinger to have a substantial interest in SkyTerra. Last year, the Commission released an Order and Declaratory Ruling granting Harbinger interim authority pursuant to Section 310(b) to have an up to 49.99% equity interest and an up to 49.99% voting interest in SkyTerra.⁶ Harbinger has a pending request for the same relief on a permanent basis.⁷

The parties demonstrate below that their proposal for Harbinger to increase its interest in SkyTerra to up to 100% is supported by good cause. In particular, they show that the requested declaratory ruling is warranted under the Commission's policies because: (1) a U.S. citizen controls the Master Fund and the Special Situations Fund; (2) each of the Harbinger Funds has its principal place of business in the United States or a WTO member country; and (3) all but a *de minimis* portion of the investments in the Harbinger Funds are made by investors from the United States and other WTO Member countries.

parties are seeking authority herein for the range of possible foreign ownership levels associated with Harbinger's ownership of up to 100 percent of SkyTerra.

⁶ *Mobile Satellite Ventures Subsidiary LLC and SkyTerra Communications, Inc.*, Order and Declaratory Ruling, FCC 08-77 (March 7, 2008).

⁷ *See* ISP-PDR-20080129-00002.

In support of this PDR, the parties are attaching the following:

- Annex 1 provides information concerning the citizenship of investors in the Harbinger Funds.
- Annex 2 provides principal place of business showings.
- Annex 3 consists of diagrams depicting the ownership of the Harbinger Funds.
- Annex 4 describes the control that Harbinger’s management has over sales of interests in the Master Fund and the Special Situations Fund so that management can monitor and enforce continuing compliance with Section 310(b).
- Annex 5 depicts the ownership structure of SkyTerra Sub that is proposed in the transfer of control applications.
- Annex 6 depicts the foreign ownership of SkyTerra by the Master Fund, the Special Situations Fund, Harbinger Capital Partners Fund I, L.P. (“Partners Fund”), TerreStar Corporation, Well Fargo Bank, National Association (“Wells Fargo”), and various Apollo funds.
- Appendix 1 identifies the interests in SkyTerra held by the Master Fund, the Special Situations Fund, and the Partners Fund.
- Appendix 2 identifies the interests in SkyTerra that Harbinger has agreed to purchase but that are being held in escrow pending action on the application seeking the Commission’s consent to transfer control of SkyTerra Sub to Harbinger. These shares were placed in escrow in connection with: (1) Harbinger’s acquisition of SkyTerra shares in April 2008 from various Apollo funds⁸; (2) Harbinger’s acquisition of SkyTerra shares in September

⁸ The shares that were placed in escrow in connection with the April 2008 transaction, all of which are voting shares, amount to 0.91% of SkyTerra’s voting stock and 0.41% of SkyTerra’s total equity.

2008 from TerreStar Corporation⁹; and (3) Wells Fargo's acquisition of SkyTerra shares in January and February 2009.¹⁰

Legal Standard

Section 310(b)(4) limits the ownership interests that foreign investors may have in any corporation that controls the licensee of a common carrier radio station. Under Section 310(b)(4), no more than 25% of the capital stock of the corporation controlling the licensee may be owned or voted by foreign citizens and their representatives, foreign governments and their representatives, and corporations organized under the laws of a foreign country. However, Section 310(b) authorizes the Commission to permit foreign investment in excess of this 25% limit if the Commission determines that the foreign investment is not inconsistent with the public interest.

The Commission has adopted a presumption that foreign investment by individuals or entities from WTO Member countries should be permitted without limit under Section 310(b)(4).¹¹ It uses a "principal place of business" test to determine whether the nationality or "home market" of a foreign investor is a WTO Member.¹²

⁹ The shares that were placed in escrow in connection with the September 2008 transaction, all of which are non-voting shares, and all of which have been transferred to Well Fargo, amount to 7.27% of SkyTerra's total equity.

¹⁰ The shares that were placed in escrow in connection with the January and February 2009 transactions, all of which are held by Wells Fargo, amount to 3.35% of SkyTerra's voting stock and 1.50% of SkyTerra's total equity.

¹¹ 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, 23896 ¶ 9, 23913 ¶ 50, and 23940 ¶¶ 111-112 (1997) ("*Foreign Participation Order*"), Order on Reconsideration, FCC 00-339, 15 FCC Rcd 18158 (2000).

¹² *Foreign Participation Order*, 12 FCC Rcd at 23941 ¶ 116 (citing *Market Entry and Regulation of Foreign-Affiliated Entities*, Report and Order, FCC 95-475, 11 FCC Rcd 3873, 3951 ¶ 207 (1995)).

Ownership of Harbinger Funds

The diagrams in Annex 3 depict the ownership of the Master Fund and the Special Situations Fund. This ownership is summarized below.

Master Fund. The Master Fund is a Cayman Islands Exempted Company. Because the Cayman Islands are a British protectorate, they are deemed to be a WTO signatory. Harbinger Capital Partners Offshore Fund I, Ltd. (“Offshore Feeder”), a Cayman Islands entity, and Cayman Islands entities co-owned by the Offshore Feeder and redeemed investors, collectively own 83.72% of the voting shares of Master Fund. The remaining 16.28% of the voting shares of Master Fund are owned by Harbinger Capital Partners Fund I, L.P., a Delaware limited partnership, and Delaware entities co-owned by Harbinger Capital Partners Fund I, L.P., and redeemed investors.

Annex 1 provides information concerning the citizenship of investors in the Master Fund. All of the direct and indirect holders of the Master Fund are either U.S. citizens or citizens of WTO signatories, except for: (1) seven investment funds from the Bahamas holding in the aggregate interests amounting to 0.53% in the Offshore Feeder; and (2) three investment funds from the Bahamas that collectively have a .01% interest in a Cayman entity that is co-owned by the Offshore Feeder and redeemed investors and a .01% interest in a Delaware entity that is co-owned by Harbinger Capital Partners Fund I, L.P., and redeemed investors.

Special Situations Fund. The Special Situations Fund is a Delaware limited partnership. The general partner of the Special Situations Fund is Harbinger Capital Partners Special Situations GP, LLC, a Delaware limited liability company, which has management control over the Special Situations Fund. All of the limited partners are U.S. citizens, except for: (1) Harbinger Capital Partners Special Situations Offshore Fund, L.P. (“Special Offshore Fund”),

which is a Cayman Islands limited partnership holding a 62.25% equity interest in the Special Situations Fund; and (2) Harbinger Capital Partners SSF CFF, Ltd., which is a Cayman Islands Exempted Company holding a 1.62% equity interest in the Special Situations Fund. The general partner of Special Offshore Fund is a Delaware limited liability company, which, in turn, is wholly owned by another Delaware limited liability company that is wholly owned by Philip A. Falcone. The limited partners of the Special Offshore Fund are widely dispersed and all have a less than 10% interest in the Special Situations Fund.

Annex 1 provides information concerning the citizenship of investors in the Special Situations Fund. All of the ownership interests are held by U.S. citizens or citizens of WTO signatories.

Control of Harbinger Funds

A U.S. citizen, Philip A. Falcone, has ultimate control of the Harbinger Funds.

Master Fund. The Master Fund and the Offshore Feeder have delegated broad investment management authority under an Investment Management Agreement to Harbinger Capital Partners LLC, a Delaware LLC (the “Offshore Manager”). Philip A. Falcone has a 100% voting interest in the Offshore Manager.¹³

Over 80% of the Master Fund’s shares, all of which are voting shares, are held by Harbinger Capital Partners Offshore Fund I, Ltd. (the “Offshore Feeder”) and entities co-owned by the Offshore Feeder and redeemed investors. No investor owns more than 50% of the voting securities of the Offshore Feeder or more than 50% of the voting securities of the entities co-owned by the Offshore Feeder and redeemed investors.

¹³ Mr. Falcone has a 50% voting interest personally and is the sole member of Harbinger Holdings, LLC, which also has a 50% voting interest.

Three persons – a US citizen, a UK citizen, and a citizen of Ireland - serve as the directors of both the Master Fund and the Offshore Feeder. Any director can be removed and replaced by majority vote of either the shareholders or the directors.

Special Situations Fund. The Special Situations Fund is a Delaware limited partnership whose General Partner is Harbinger Capital Partners Special Situations GP, L.L.C. (“SSGP”), a Delaware LLC. Philip A. Falcone has a 100% voting interest in SSGP:¹⁴

Principal Places of Business

Annex 2 consists of principal place of business showings for the Master Fund, the Special Situations Fund, Harbinger Capital Partners Offshore Fund I, Ltd., and Harbinger Capital Partners Special Situations Offshore Fund, L.P. In every case, the principal place of business is either the United States or a country that is a WTO signatory.

Conclusion

Under the Commission’s policies and precedents implementing Section 310(b)(4) of the Communications Act, up to 100% ownership of SkyTerra by Harbinger would be consistent with the public interest because: (1) a U.S. citizen controls the Master Fund and the Special Situations Fund; (2) each of the Harbinger Funds has its principal place of business in the United States or a WTO member country; and (3) all but a *de minimis* portion of the investments in the Harbinger Funds are made by investors from the United States and other WTO Member countries.

¹⁴ Mr. Falcone has a 50% voting interest personally and is the sole member of Harbinger Holdings, LLC, which also has a 50% voting interest.

**Annex 1 to Petition for Declaratory Ruling:
Investor Interests in the Harbinger Funds**

Harbinger Capital Partners Offshore Fund I, Ltd.

<i>Category of Investor</i>	<i>Aggregate % Equity</i>	<i>Country of Citizenship/Country of Organization/Principal Place of Business of Beneficial Owner of Equity Interest</i>
Individuals that are citizens of the United States	0.05%	United States
Individuals that are citizens of foreign countries	0.37%	Canada, China, South Africa, United Kingdom, Switzerland
Banks, insurance companies, pension plans and foundations/endowments organized in the United States <u>and</u> controlled by U.S. citizens	4.20%	United States
Banks, insurance companies, pension plans and foundations/endowments controlled by foreign citizens <u>or</u> organized in foreign countries	19.46%	Australia, Bermuda, Cayman Islands, Channel Islands, China, Finland, Hong Kong, Ireland, Isle of Man, Luxembourg, Norway, Sweden, Switzerland, France, The Netherlands, United Kingdom
Private equity and mutual funds that are organized in the United States <u>and</u> have their principal place of business in the U.S.	0.0%	United States
Private equity and mutual funds that are organized in a foreign country <u>or</u> have their principal place of business in a foreign country	0.0%	
Any investors that do not fall into one of the foregoing categories that are organized in the United States <u>and</u> have their principal place of business in the U.S.	0.66%	United States
Any investors that do not fall into one of the foregoing categories that are organized in a foreign country <u>or</u> have their principal place of business in a foreign country	75.26%	Arab Emirates, Australia, Bermuda, Brazil, British Virgin Islands, Canada, Cayman Islands, Channel Islands, Chile, China, France, Hong Kong, Italy, Isle of Man, Ireland, Japan, Luxembourg, Norway, Panama, Portugal, Singapore, Spain, Sweden, Switzerland, Netherlands Antilles, The Bahamas, The Netherlands, United Kingdom

**Annex 1 to Petition for Declaratory Ruling:
Investor Interests in the Harbinger Funds**

<i>Harbinger Capital Partners Fund I, L.P.</i>		
<i>Category of Investor</i>	<i>Aggregate % Equity</i>	<i>Country of Citizenship/Country of Organization/Principal Place of Business of Beneficial Owner of Equity Interest</i>
Individuals that are citizens of the United States	6.74%	United States
Individuals that are citizens of foreign countries	0.0%	
Banks, insurance companies, pension plans and foundations/endowments organized in the United States <u>and</u> controlled by U.S. citizens	13.01%	United States
Banks, insurance companies, pension plans and foundations/endowments controlled by foreign citizens <u>or</u> organized in foreign countries	0.0%	
Private equity and mutual funds that are organized in the United States <u>and</u> have their principal place of business in the U.S.	0.0%	
Private equity and mutual funds that are organized in a foreign country <u>or</u> have their principal place of business in a foreign country	0.0%	
Any investors that do not fall into one of the foregoing categories that are organized in the United States <u>and</u> have their principal place of business in the U.S.	80.25%	United States
Any investors that do not fall into one of the foregoing categories that are organized in a foreign country <u>or</u> have their principal place of business in a foreign country	0.0%	

**Annex 1 to Petition for Declaratory Ruling:
Investor Interests in the Harbinger Funds**

<i>Harbinger Capital Partners Special Situations Fund, L.P.</i>		
<i>Category of Investor</i>	<i>Aggregate % Equity</i>	<i>Country of Citizenship/Country of Organization/Principal Place of Business of Beneficial Owner of Equity Interest</i>
Individuals that are citizens of the United States	5.90%	United States
Individuals that are citizens of foreign countries	0.0%	
Banks, insurance companies, pension plans and foundations/endowments organized in the United States <u>and</u> controlled by U.S. citizens	3.98%	United States
Banks, insurance companies, pension plans and foundations/endowments controlled by foreign citizens <u>or</u> organized in foreign countries	0.0%	
Private equity and mutual funds that are organized in the United States <u>and</u> have their principal place of business in the U.S.	0.0%	United States
Private equity and mutual funds that are organized in a foreign country <u>or</u> have their principal place of business in a foreign country	0.0%	
Any investors that do not fall into one of the foregoing categories that are organized in the United States <u>and</u> have their principal place of business in the U.S.	25.77%	United States
Any investors that do not fall into one of the foregoing categories that are organized in a foreign country <u>or</u> have their principal place of business in a foreign country	64.35%	Cayman Islands ¹

¹ Information regarding the investors in this fund is set forth on p. 4 of this Annex 1.

**Annex 1 to Petition for Declaratory Ruling:
Investor Interests in the Harbinger Funds**

<i>Harbinger Capital Partners Special Situations Offshore Fund, L.P.</i>		
<i>Category of Investor</i>	<i>Aggregate % Equity</i>	<i>Country of Citizenship/Country of Organization/Principal Place of Business of Beneficial Owner of Equity Interest</i>
Individuals that are citizens of the United States	0.12%	United States
Individuals that are citizens of foreign countries	0.36%	Channel Islands, Germany, Switzerland
Banks, insurance companies, pension plans and foundations/endowments organized in the United States <u>and</u> controlled by U.S. citizens	14.04%	United States
Banks, insurance companies, pension plans and foundations/endowments controlled by foreign citizens <u>or</u> organized in foreign countries	17.44%	Cayman Islands, Finland, Luxembourg, Netherland Antilles, Switzerland, The Netherlands,
Private equity and mutual funds that are organized in the United States <u>and</u> have their principal place of business in the U.S.	0.0%	United States
Private equity and mutual funds that are organized in a foreign country <u>or</u> have their principal place of business in a foreign country	0.0%	
Any investors that do not fall into one of the foregoing categories that are organized in the United States <u>and</u> have their principal place of business in the U.S.	1.97%	United States
Any investors that do not fall into one of the foregoing categories that are organized in a foreign country <u>or</u> have their principal place of business in a foreign country	66.07%	British Virgin Islands, Channel Islands, Canada, Cayman Islands, Finland, Germany, Gibraltar, Guernsey, Ireland, Italy, Liechtenstein, Luxembourg, Norway, Panama, Switzerland, The Netherlands

**Annex 1 to Petition for Declaratory Ruling:
Investor Interests in the Harbinger Funds**

<i>Harbinger Capital Partners SSF CFF Fund, LTD</i>		
<i>Category of Investor</i>	<i>Aggregate % Equity</i>	<i>Country of Citizenship/Country of Organization/Principal Place of Business of Beneficial Owner of Equity Interest</i>
Individuals that are citizens of the United States	0.0%	
Individuals that are citizens of foreign countries	0.0%	
Banks, insurance companies, pension plans and foundations/endowments organized in the United States <u>and</u> controlled by U.S. citizens	0.0%	
Banks, insurance companies, pension plans and foundations/endowments controlled by foreign citizens <u>or</u> organized in foreign countries	20.41%	Cayman Islands
Private equity and mutual funds that are organized in the United States <u>and</u> have their principal place of business in the U.S.	0.0%	
Private equity and mutual funds that are organized in a foreign country <u>or</u> have their principal place of business in a foreign country	0.0%	
Any investors that do not fall into one of the foregoing categories that are organized in the United States <u>and</u> have their principal place of business in the U.S.	35.45%	United States
Any investors that do not fall into one of the foregoing categories that are organized in a foreign country <u>or</u> have their principal place of business in a foreign country	44.14%	Cayman Islands

**Annex 2 to Petition for Declaratory Ruling:
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 Special Situations Fund, L.P.

- (i) Country of organization:
UNITED STATES
- (ii) Citizenship of investment principals, officers and directors:
UNITED STATES
- (iii) Location of world headquarters:
UNITED STATES
- (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

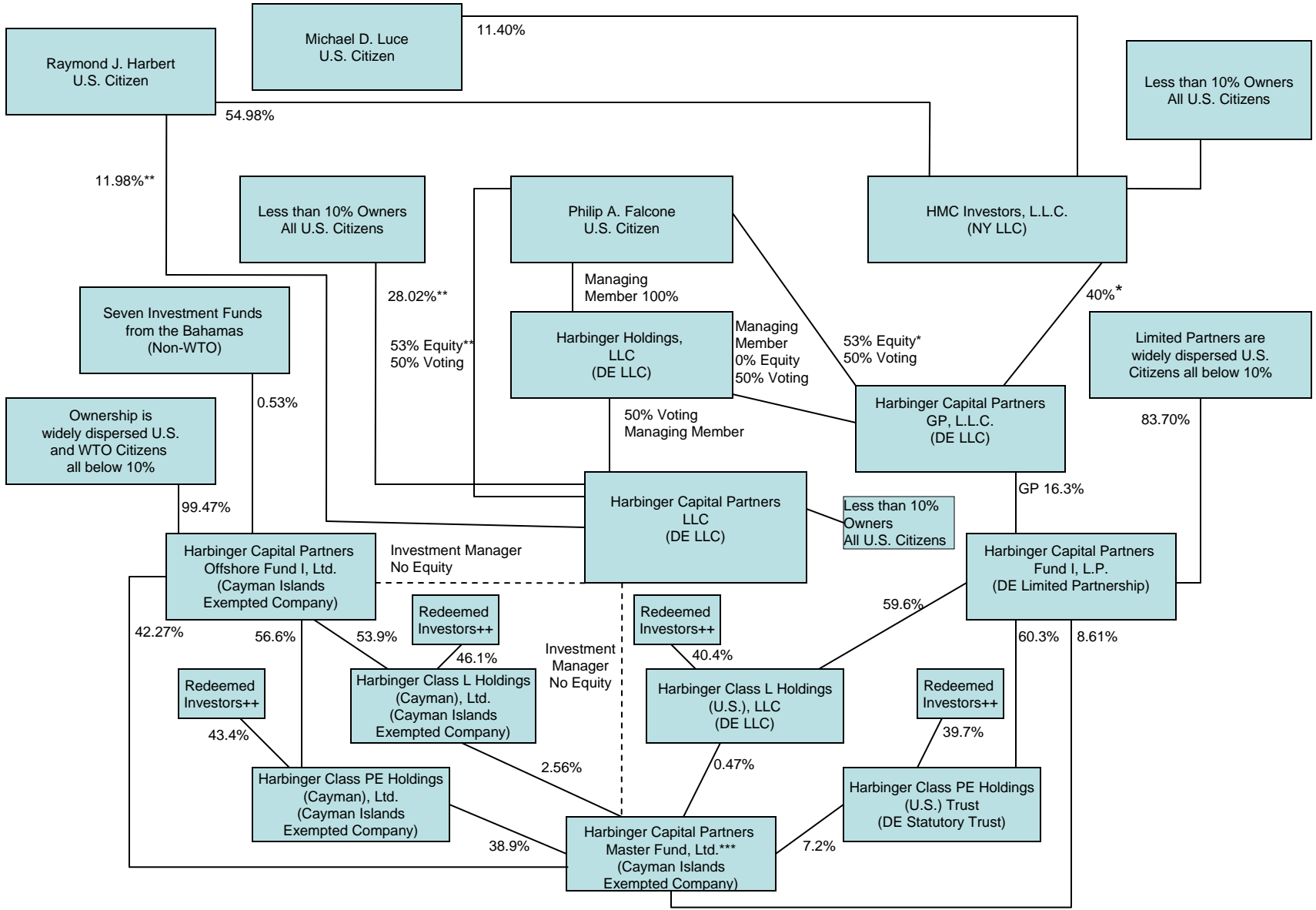
Harbinger Capital Partners Special Situations Offshore Fund, L.P.

- (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

Harbinger Capital Partners SSF CFF, 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

Annex 3 MASTER FUND OWNERSHIP DIAGRAM



(footnotes from previous page)

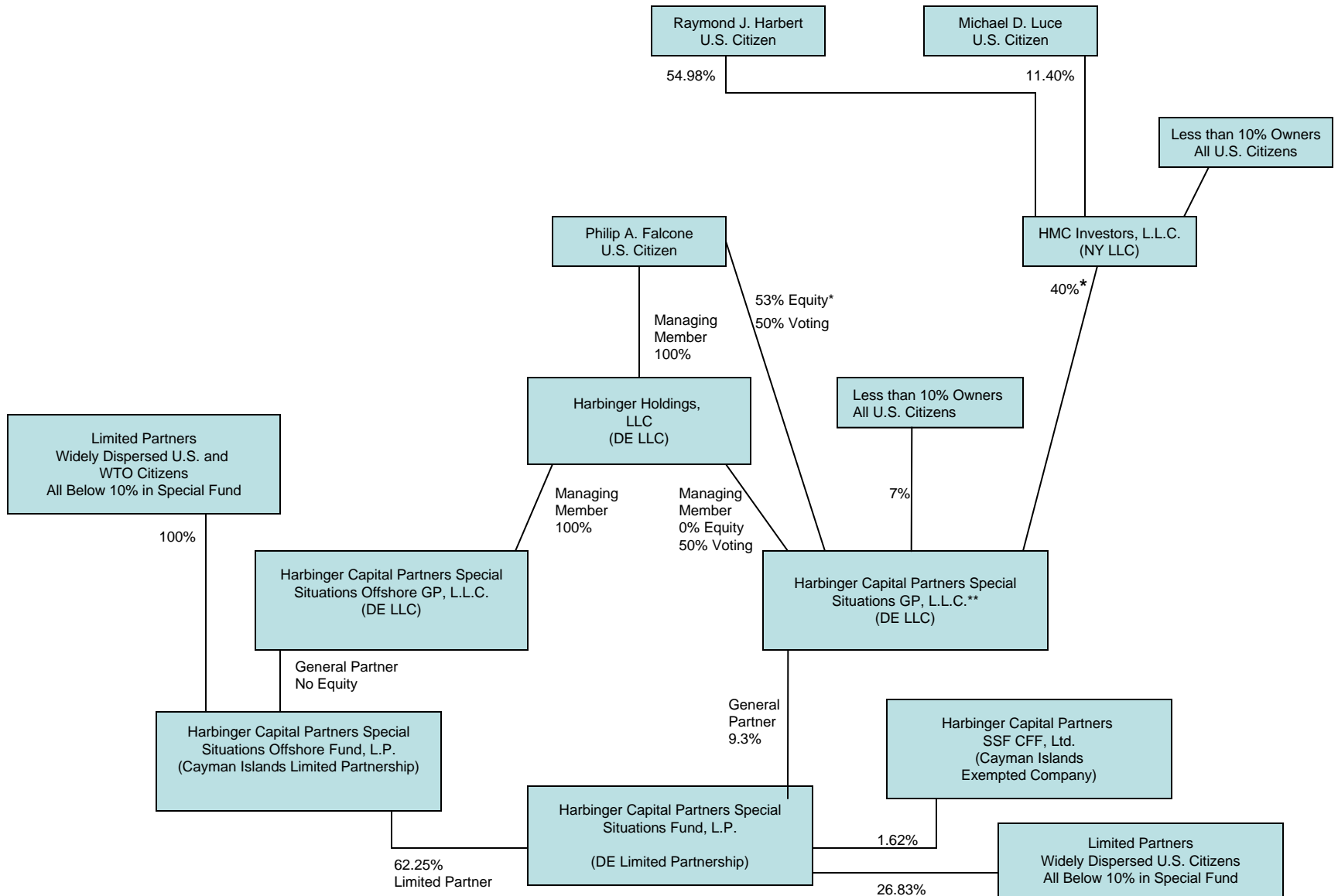
* In 2009 and 2010, as the asset value and performance returns of the fund increase, Philip A. Falcone's equity percentage increases and HMC Investors, L.L.C.'s equity percentage decreases. In 2011, Philip A. Falcone's equity percentage will be 73% and HMC Investors, L.L.C.'s equity percentage will be 20%. In 2012, Philip A. Falcone's equity percentage will be 78% and HMC Investors, L.L.C.'s equity percentage will be 15%. Thereafter, Philip A. Falcone's equity percentage will be 93% and HMC Investors, L.L.C.'s equity percentage will be 0%.

** The equity percentages shown apply only to performance fees received by Harbinger Capital Partners LLC from Harbinger Capital Partners Offshore Fund I, Ltd. and Harbinger Capital Partners Fund I, L.P.; neither Raymond J. Harbert nor the "less than 10% owners" share in management fees or other fees received by Harbinger Capital Partners LLC. In 2009 and 2010, as the asset value and performance returns of the fund increase, Philip A. Falcone's equity percentage increases and the equity percentages of Raymond J. Harbert and the "less than 10% owners" decrease. In 2011, Philip A. Falcone's equity percentage will be 73% and the equity percentages of Raymond J. Harbert and the "less than 10% owners" collectively will be 20%. In 2012, Philip A. Falcone's equity percentage will be 78% and the equity percentages of Raymond J. Harbert and the "less than 10% owners" collectively will be 15%. Thereafter, Philip A. Falcone's equity percentage will be 93% and the equity percentages of Raymond J. Harbert and the "less than 10% owners" will be 0%. Through June 30, 2009, the consent of HMC-New York, Inc., which was formerly the Managing Member of, and had a 50% voting interest in, Harbinger Capital Partners GP, L.L.C., will be required to take certain actions with respect to Harbinger Capital Partners LLC or Harbinger Capital Partners GP, L.L.C.

*** Directors: Martin Byrne, Cayman Islands Resident and Irish Citizen; Ian Goodall, Cayman Islands Resident and U.K. Citizen; and a U.S. citizen whose identity will be determined in the near future.

++ Ownership is widely dispersed U.S. and WTO Citizens all below 10%, except for three investment funds from the Bahamas, which is non-WTO, that collectively have a .01% interest in Harbinger Class PE Holdings (Cayman), Ltd. and a .01% interest in Harbinger Class L Holdings (U.S.), LLC.

Annex 3 SPECIAL SITUATIONS FUND OWNERSHIP DIAGRAM



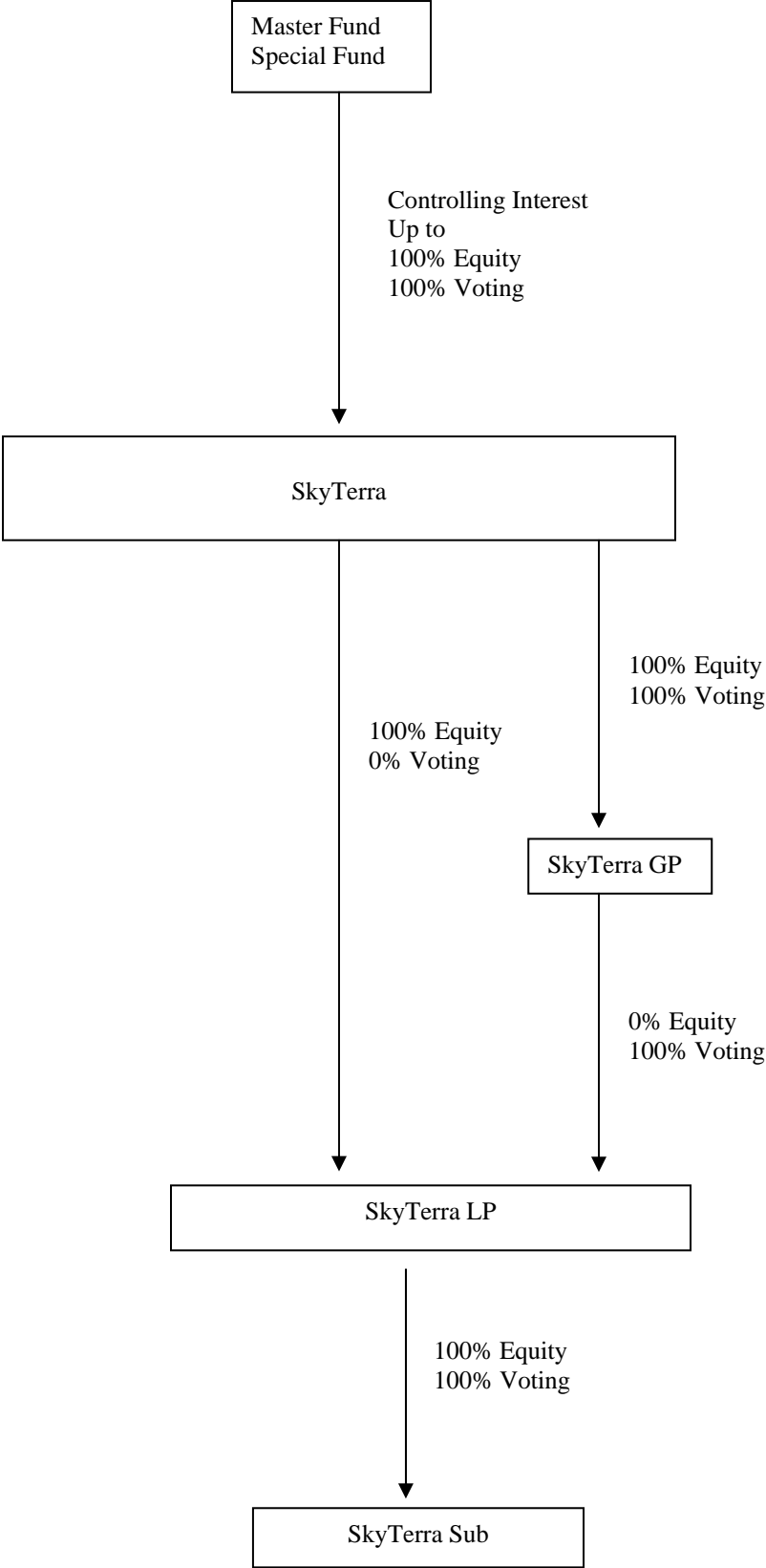
* In 2009 and 2010, as the asset value and performance returns of the fund increase, Philip A. Falcone's equity percentage increases and HMC Investors, L.L.C.'s equity percentage decreases. In 2011, Philip A. Falcone's equity percentage will be 73% and HMC Investors, L.L.C.'s equity percentage will be 20%. In 2012, Philip A. Falcone's equity percentage will be 78% and HMC Investors, L.L.C.'s equity percentage will be 15%. Thereafter, Philip A. Falcone's equity percentage will be 93% and HMC Investors, L.L.C.'s equity percentage will be 0%.

** Until such time as the investors in the Special Situations Fund have had the opportunity to redeem their interests, the consent of HMC-New York, Inc., which was formerly the Managing Member of, and had a 50% voting interest in, Harbinger Capital Partners Special Situations GP, L.L.C. ("Special Situations GP"), will be required to take certain actions with respect to Special Situations GP.

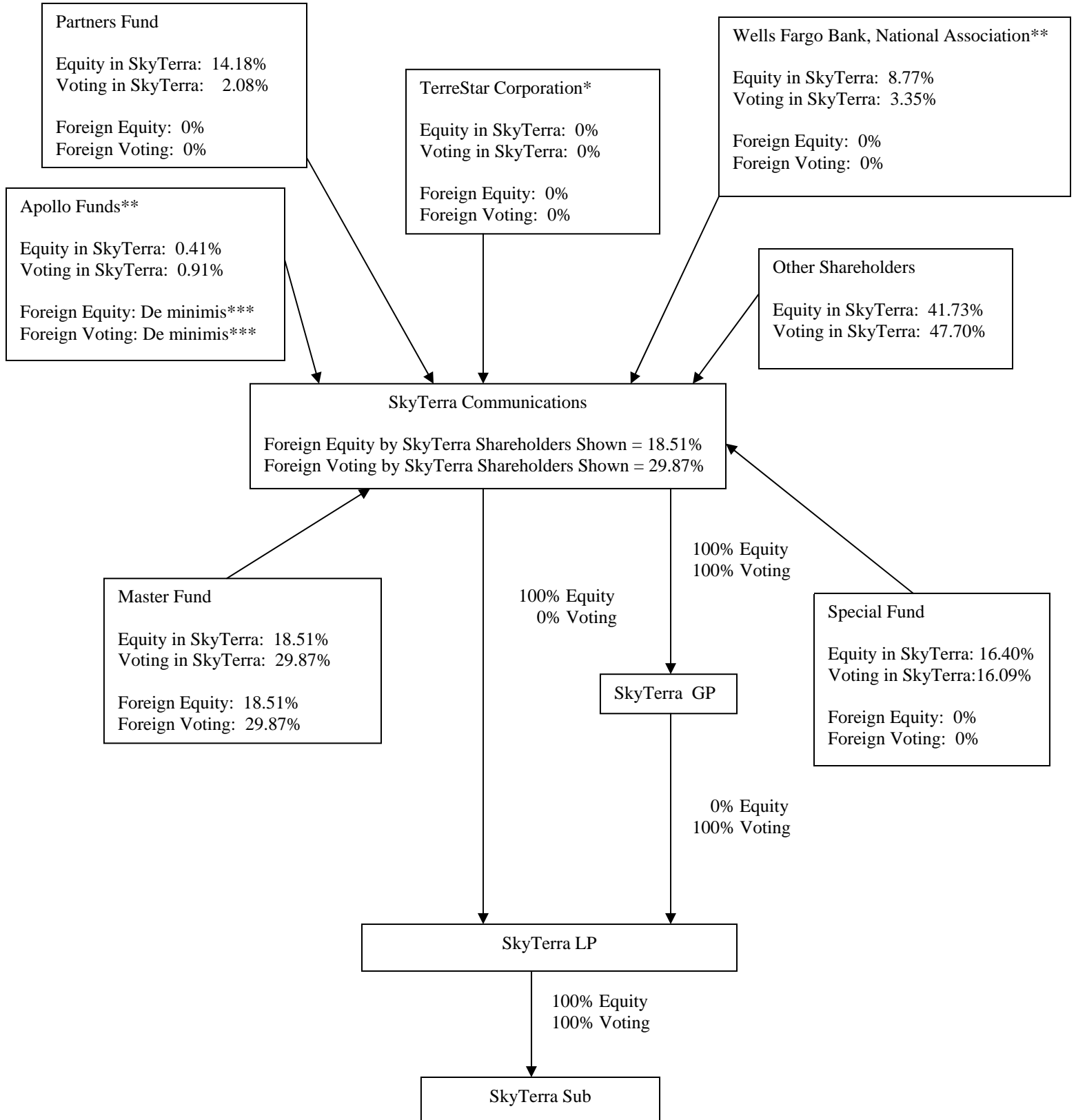
**Annex 4 to Petition for Declaratory Ruling:
SALE RESTRICTIONS**

Harbinger's management has the ability to prevent limited partners from selling their interests in the Master Fund and the Special Fund to third parties if the sales would cause foreign ownership to exceed the levels permitted under Section 310(b) of the Communications Act and declaratory rulings issued thereunder. Sales of limited partnership interests in any of the following companies, and such sales are rare, are subject to approval by Harbinger: Harbinger Capital Partners Fund I, L.P.; Harbinger Capital Partners Special Situations Fund, L.P.; and Harbinger Capital Partners Special Situations Offshore Fund, L.P. Similarly, sales of shares in Harbinger Capital Partners Offshore Fund I, Ltd. are subject to approval by Harbinger.

**Annex 5 to Petition for Declaratory Ruling:
PROPOSED CONTROL OF SKYTERRA SUB BY THE HARBINGER FUNDS**



**ANNEX 6:
FOREIGN OWNERSHIP OF SKYTERRA BY THE HARBINGER FUNDS, TERRESTAR CORPORATION, WELLS FARGO, AND APOLLO**



* Through Motient Venture Holdings.

** Shares held in escrow.

*** In *Mobile Satellite Ventures, LLC and SkyTerra Communications, Inc.*, Order and Declaratory Ruling, FCC 08-77 (Mar. 7, 2008), Attachment 2, the foreign ownership in SkyTerra Communications attributable to the Apollo Funds was shown to be 0.63% foreign equity and 1.20% foreign voting. Since that time, the ownership interest of the Apollo Funds in SkyTerra Communications has decreased substantially.

Appendix 1

Harbinger Ownership in SkyTerra Communications	Master Fund	Partners Fund	Special Fund	Total
Voting Equity	29.87%	2.08%	16.09%	48.04%
Total Equity	18.51%	14.18%	16.40%	49.09%

Appendix 2

SkyTerra Communications Shares in Escrow	Shares to be Transferred to Master Fund	Shares to be Transferred to Partners Fund	Shares to be Transferred to Special Situations Fund	Total
Voting Escrow	3.16%	—	1.10%	4.26%
Total Escrow	6.26%	—	2.92%	9.18%