

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
SkyTerra Communications, Inc., Transferor)	IB Docket No. 08-184
)	
and)	FCC File Nos.:
)	
Harbinger Capital Partners Funds, Transferee)	ITC-T/C-20080822-00397
)	SAT-T/C-20080822-00157
Applications for Consent to Transfer of Control of)	SES-T/C 20080822-01089
SkyTerra Subsidiary, LLC)	SES-T/C-20080822-01088
)	0003540644
)	0021-EX-TU-2008 and
)	ISP-PDR-20080822-00016

MEMORANDUM OPINION AND ORDER AND DECLARATORY RULING

Adopted: March 26, 2010

Released: March 26, 2010

By the Chief, International Bureau, Chief, Office of Engineering and Technology and Chief, Wireless Telecommunications Bureau:

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I. INTRODUCTION

1. In this Memorandum Opinion and Order and Declaratory Ruling, we consider a series of applications (collectively, “Application”) filed by Harbinger Capital Partners Funds (“Harbinger”) and SkyTerra Communications, Inc. (“SkyTerra Communications,” and together with Harbinger, the “Applicants”) under sections 214 and 310 of the Communications Act of 1934, as amended (the “Act”), for authority to transfer control of SkyTerra Subsidiary, LLC (“SkyTerra”) and its respective licenses and authorizations, from the current shareholders of SkyTerra Communications to Harbinger.¹ Based on the record established in this proceeding, we find that grant of the Application and the associated petition for declaratory ruling filed under section 310(b)(4) of the Act² will serve the public interest, convenience, and necessity, subject to the conditions specified below.

II. BACKGROUND

A. Description of the Applicants.

1. The Transferor – SkyTerra Communications

2. SkyTerra Communications is a publicly traded company organized under the laws of Delaware. SkyTerra Communications wholly owns SkyTerra LP, a Delaware limited partnership that, in turn, wholly owns SkyTerra, a Delaware limited liability company.³ SkyTerra LP’s general partner,

¹ 47 U.S.C. §§ 214, 310(d). *See* SkyTerra Communications, Inc., Transferor, Harbinger Capital Partners Funds, Transferee, Applications for Authority to Transfer Control of SkyTerra Subsidiary LLC, Narrative, IB Docket No. 08-184 (filed Mar. 27, 2009) (“SkyTerra Narrative”); Letter from Joseph A. Godles, Counsel for Harbinger Capital Partners Funds, to Marlene H. Dortch, Secretary, Federal Communications Commission (dated March 31, 2009); Letter from Joseph A. Godles, Counsel for Harbinger Capital Partners Funds, to Marlene H. Dortch, Secretary, Federal Communications Commission (dated October 19, 2009) (“October 19, 2009 Amendment”); Letter from Henry Goldberg and Joseph A. Godles, Counsel for Harbinger Capital Partners Funds, to Marlene H. Dortch, Secretary, Federal Communications Commission (dated December 11, 2009) (“Harbinger December 11, 2009 Response”); Letter from Henry Goldberg and Joseph A. Godles, Counsel for Harbinger Capital Partners Funds, to Marlene H. Dortch, Secretary, Federal Communications Commission (dated January 12, 2010) (“Harbinger January 12, 2010 Response”); Letter from Henry Goldberg and Joseph A. Godles, Counsel for Harbinger Capital Partners Funds, to Marlene H. Dortch, Secretary, Federal Communications Commission (dated February 5, 2010) (“Harbinger Feb. 5, 2010 Response”); Letter from Henry Goldberg and Joseph A. Godles, Counsel for Harbinger Capital Partners Funds, to Marlene H. Dortch, Secretary, Federal Communications Commission (dated February 26, 2010) (“Harbinger Feb. 26, 2010 Amendment”); Letter from Henry Goldberg and Joseph A. Godles, Counsel for Harbinger Capital Partners Funds, to Marlene H. Dortch, Secretary, Federal Communications Commission (dated March 26, 2010) (“Harbinger Business Plan Letter”). We include the Harbinger Business Plan Letter as Appendix B to this Memorandum Opinion and Order and Declaratory Ruling. We note that the applications for this transfer of control, including a narrative, were filed on August 22, 2008. The SkyTerra Narrative incorporates changes that have taken place since the applications were filed and replaces the narrative filed on August 22, 2008. SkyTerra was formerly known as Mobile Satellite Ventures Subsidiary LLC. *See* SkyTerra Narrative at 2, n.3.

² The petition for declaratory ruling is attached to the SkyTerra Narrative (Attachment B).

³ SkyTerra Narrative at 5. SkyTerra LP was formerly known as Mobile Satellite Ventures LP. *See* SkyTerra Narrative at 2, n.3.

SkyTerra GP Inc., is an indirect wholly-owned subsidiary of SkyTerra Communications.⁴ SkyTerra Communications also holds a 10.6 percent equity interest in TerreStar Networks Inc. (“TerreStar Networks”), a subsidiary of TerreStar Corporation (“TerreStar”).⁵

3. SkyTerra, the licensee, operates a Mobile Satellite Service (“MSS”) system in the L-band.⁶ SkyTerra is authorized to operate AMSC-1, a U.S.-licensed satellite, and to launch and operate SkyTerra-1, a replacement satellite for AMSC-1.⁷ SkyTerra has authority to operate ancillary terrestrial component (“ATC”) facilities in conjunction with these satellites. It also holds fixed and mobile earth station licenses, section 214 authorizations, experimental licenses and a mobile itinerant license associated with these satellites and a planned MSS-ATC network.⁸

4. SkyTerra Communications, through its indirect wholly-owned subsidiary SkyTerra LP, has interests in two Canadian companies; a 20 percent interest in SkyTerra (Canada) Inc. (“SkyTerra Canada”) and a 33 percent interest in SkyTerra Holdings (Canada) Inc., the latter being the holding company of SkyTerra Canada. The remaining 67 percent interest in SkyTerra Holdings (Canada) Inc. is indirectly owned by BCE, a Canadian corporation.⁹ SkyTerra Canada 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.¹⁰ SkyTerra Communications and SkyTerra Canada cooperate to provide land mobile services in the United States and Canada through their existing satellites and are developing an integrated satellite-terrestrial communications network that would provide wireless coverage to consumer handsets in the United States and Canada.¹¹

2. Transferee – Harbinger

5. Harbinger is a private investment firm based in New York City. Two of Harbinger’s funds, the Harbinger Capital Partners Master Fund I, Ltd. (“Master Fund”) and the Harbinger Capital Partners

⁴ SkyTerra Narrative at 5. SkyTerra GP Inc. was formerly known as Mobile Satellite Ventures GP. *See* SkyTerra Narrative at 2, n.3.

⁵ *See SkyTerra Communications, Inc., Form 10-K, Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 for the Fiscal Year Ended December 31, 2009* at 2.

⁶ SkyTerra Narrative at 4. In 1989, the Commission licensed SkyTerra to operate MSS in the L-band. *See Amendment of Parts 2, 22 and 25 of the Commission’s Rules to Allocate Spectrum for and to Establish Other Rules and Policies Pertaining to the Use of Radio Frequencies in a Land Mobile Satellite Service for the Provision of Various Common Carrier Services, Hughes Communications Mobile Satellite, Inc., et al.*, Gen. Docket No. 84-1234, Memorandum Opinion, Order and Authorization, FCC 89-183, 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). The “L-band” is a general designation for frequencies from 1 to 2 GHz. In the United States, the Commission has allocated L-band spectrum for MSS downlinks (space to Earth transmissions) in the 1525-1544 MHz and 1545-1559 MHz bands and for MSS uplinks (Earth to space transmissions) in the 1626.5-1645.5 MHz and 1646.5-1660.5 MHz bands. *See* 47 C.F.R. § 2.106.

⁷ SkyTerra Narrative at 4. SkyTerra-1 was formerly known as MSV-1. *See* SkyTerra Narrative at 2, n.3.

⁸ SkyTerra Narrative at 4.

⁹ *See* Letter from Jeffrey Carlisle, Vice President, Regulatory Affairs, SkyTerra Subsidiary LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission (dated March 18, 2010) (attaching an ownership chart that depicts SkyTerra’s corporate structure).

¹⁰ SkyTerra Narrative at 5. SkyTerra Canada was formerly known as Mobile Satellite Ventures (Canada) Inc. SkyTerra-2 was formerly known as MSV-2. *See* SkyTerra Narrative at 2, n.3.

¹¹ SkyTerra Narrative at 5.

Special Situations Fund, L.P. (“Special Situations Fund”), hold the majority of Harbinger’s current interests in SkyTerra Communications.¹² According to the Applicants, Harbinger holds approximately 48 percent of the equity and approximately 46 percent of the voting interests in SkyTerra Communications, along with warrants for additional voting shares in SkyTerra Communications.¹³ The Applicants also state that Harbinger has the right to acquire additional shares of SkyTerra Communications out of escrow¹⁴ if the Commission approves the transfer of control of SkyTerra to Harbinger.¹⁵

6. Harbinger also has interests in other MSS companies. Harbinger owns approximately 31 percent of the voting shares and approximately 44 percent of the equity of TerreStar as well as convertible and non-convertible debt instruments in TerreStar’s subsidiary, TerreStar Networks.¹⁶ In addition, based

¹² In addition, two other funds managed by Harbinger Capital Partners LLC, the Blue Line Fund and the Global Opportunities Breakaway Ltd. Fund, hold various interests in SkyTerra. Harbinger December 11, 2009 Response at 9.

¹³ See Harbinger December 11, 2009 Response at 8-9. We note that, on August 24, 2009, the International Bureau approved Harbinger’s request to acquire up to 62% of the equity and 49.99% of the voting interests in SkyTerra Communications. See *Harbinger Capital Master Fund I, Ltd. and Harbinger Capital Partners Special Situations Fund, L.P., Petition for Declaratory Ruling under Section 310(b) of the Communications Act of 1934, as Amended*, Order and Declaratory Ruling, DA 09-1862, 24 FCC Rcd 10953 (Int’l Bur. 2009) (“*SkyTerra Permanent Authority Order*”).

¹⁴ See SkyTerra Narrative at 6, n.10. The escrowed shares include: (1) 0.91% of SkyTerra Communications’ voting stock and 0.41% of SkyTerra Communications’ equity stemming from an April 2008 transaction in which Harbinger acquired shares of SkyTerra Communications from various Apollo funds; (2) 7.27% of SkyTerra Communications’ total equity (non-voting) that were transferred to Wells Fargo Bank, National Association (“Wells Fargo”) and placed in escrow in connection with a September 2008 transaction in which Harbinger acquired SkyTerra Communications shares from TerreStar; and (3) 3.35% of SkyTerra Communications’ voting stock and 1.50% of SkyTerra Communications’ equity that were placed in escrow with Wells Fargo in January and February 2009. SkyTerra Narrative at 6 n.10. See also Letter from Joseph A. Godles, Counsel to Harbinger, to Marlene H. Dortch, Secretary, Federal Communications Commission (dated March 10, 2009) (attaching agreements that govern the escrowed shares of SkyTerra Communications) and Harbinger Capital Partners Master Fund I, Ltd. and Harbinger Capital Partners Special Situations Fund, L.P., Amendment to Petition for Declaratory Ruling (dated April 17, 2009) (amending the Wells Fargo Agreement). The escrow agreements and the amendment are available in IBFS under File No. ISP-PDR-20080129-00002, as amended by ISP-AMD-20090417-00002.

¹⁵ We note that, in the *SkyTerra Permanent Authority Order*, the International Bureau found that Harbinger was the beneficial owner of SkyTerra Communications’ shares held in escrow under the Wells Fargo Agreement. As a result, the International Bureau attributed to Harbinger an additional 8.77% equity interest in SkyTerra Communications and, therefore, determined that Harbinger held at least a 57.86% equity interest in SkyTerra Communications. See *SkyTerra Permanent Authority Order*, 24 FCC Rcd at 10961, ¶ 16. We emphasize that the actions taken in this Memorandum Opinion and Order and Declaratory Ruling herein do not limit the Commission’s options concerning foreign ownership standards. See *id.* at 10966, ¶ 21. See also *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*, File No. ISP-PDR-20070314-00004, Declaratory Ruling, FCC 08-77, 23 FCC Rcd 4436, 4443, ¶ 16 (2008) (“*2008 MSV Order*”).

¹⁶ SkyTerra Narrative at 6; Harbinger December 11, 2009 Response at 10. See also *TerreStar Networks Inc., Petition for Declaratory Ruling Under Section 310(b) (4) of the Communications Act of 1934, as amended*, Order and Declaratory Ruling, DA 09-2628, ¶ 5 (rel. Dec. 23, 2009) (stating that, in addition to the above-mentioned voting and equity interests, Harbinger has a right to nominate two of TerreStar’s directors). TerreStar previously held an equity interest in SkyTerra, but has since sold that interest. See *TerreStar Sells Remaining Interest in SkyTerra for \$123 M* (dated September 16, 2008), available at <http://www.terrestar.com/news/press/20080916.html>. TerreStar’s subsidiary, TerreStar Networks, Inc., holds an FCC letter of intent authorization to launch and operate in (continued....)

on publicly-available information, Harbinger, through its Master Fund and Special Situations Fund, holds approximately 29 percent of the issued and outstanding voting shares of Inmarsat plc and holds convertible debt instruments issued by subsidiaries of Inmarsat.¹⁷

7. Harbinger also holds interests in other communications companies, including, but not limited to,¹⁸ Leap Wireless International, Inc. (“Leap Wireless”), Sprint Nextel Corp (“Sprint”), Augere Holdings (Netherlands) B.V. (“Augere”) and Satélites Mexicanos Sa de CV (“SatMex”).¹⁹ The Special Situations Fund owns 1,142,000 shares of voting common stock in Leap Wireless.²⁰ The Master Fund owns 75,000,000 shares of Sprint’s voting common stock.²¹ In addition, Harbinger owns a 25 percent voting interest in Augere.²² Finally, HCP Satmex (Dutch) B.V. (“Satmex SPV”), a Dutch private limited liability company that is a wholly-owned subsidiary of the Master Fund,²³ holds approximately a 17.5 percent equity interest and 9.5 percent voting interest in SatMex.²⁴

B. Description of the Transaction

8. Harbinger initially proposed to acquire control of SkyTerra Communications and its subsidiaries through the exercise of warrants and/or by other stock acquisitions, including the right to acquire SkyTerra Communications shares currently held in escrow if the Commission consented to the transfer of control of SkyTerra to Harbinger.²⁵ However, in October 2009, Harbinger filed an amendment reflecting changes to the ownership structure. Under the proposed change, Harbinger would hold an indirect, instead of a direct, interest in SkyTerra Communications through a wholly-owned holding company, HGW Holding Company, L.P. (“HGW”), which would own shares of SkyTerra

(Continued from previous page) _____

the United States TerreStar-1, a Canadian-licensed S-band MSS satellite that will serve the United States and Canada. SkyTerra Narrative at 6.

¹⁷ SkyTerra Narrative at 6. *See also* Harbinger December 11 Response at 6. In particular, the Master Fund holds 89,804,544 ordinary shares and debt instruments that convert into 5,514 ordinary shares in Inmarsat. The Special Situations Fund holds 39,472,805 ordinary shares and debt instruments that convert into 987,080 ordinary shares of Inmarsat. *Id.*

¹⁸ Additional interests are held by Harbinger’s Master Fund, as well as its Credit Distressed Blue Line Master Fund, Ltd. (“Blue Line Fund”). *See* Harbinger December 11 Response at 6.

¹⁹ Augere is a Dutch private limited liability company that provides broadband Internet services in South Asian emerging markets. SatMex is a Mexican-based fixed satellite service operator. Harbinger December 11, 2009 Response at 9.

²⁰ *See Harbinger Capital Partners Special Situations Fund, L.P., Form 13F, Quarterly Report Pursuant to the Securities Exchange Act of 1934 for the quarterly period ended December 31, 2009, available at* <http://www.sec.gov/Archives/edgar/data/1371517/000090514810000508/0000905148-10-000508.txt>.

²¹ *See Harbinger Capital Partners Master Fund Ltd. I, Form 13F, Quarterly Report Pursuant to the Securities Exchange Act of 1934 for the quarterly period ended December 31, 2009, available at* http://www.sec.gov/Archives/edgar/data/1233563/000090514810000506/efc10-160_13fhr.txt. Harbinger December 11 Response at 9.

²² Harbinger December 11, 2009 Response at 5.

²³ Satmex SPV holds 71,690 units (representing approximately 21.4% of the total units) of a Mexican trust which holds two separate classes of shares of SatMex, which combined shares represent an approximate 43% voting interest and 78% equity interest in SatMex. Harbinger December 11, 2009 Response at 7.

²⁴ Harbinger December 11, 2009 Response at 8.

²⁵ SkyTerra Narrative at 6, 7.

Communications.²⁶ In addition, Harbinger would no longer obtain control of SkyTerra by acquiring additional shares of SkyTerra Communications, but, instead, SkyTerra Communications would merge with a subsidiary of HGW and become a private, closely-held corporation.²⁷ On February 26, 2010, Harbinger filed another amendment explaining two additional changes to the proposed ownership structure.²⁸ First, the ownership structure would include a second intermediate company between SkyTerra and Harbinger called HGW US Holding Company, L.P. (“HGW US”), a Delaware limited partnership, which would own 100 percent of SkyTerra Communications. Second, Harbinger (*i.e.*, the Master Fund and Special Situations Fund) would own 99.9 percent of HGW (instead of 100 percent), which, in turn, would own 99.9 percent of HGW US. HGW’s general partner, HGW GP Ltd. (“HGW GP”), would hold the remaining 0.1 percent in HGW and HGW US’ general partner, HGW US GP Corp., would hold the remaining 0.1 percent in HGW US.²⁹

C. Application and Review Process

9. The Application was placed on Public Notice on May 1, 2009.³⁰ The Commission only received submissions from the United States Department of Justice (“DOJ”), Federal Bureau of Investigation (“FBI”) and the Department of Homeland Security (“DHS”), which collectively filed a letter on June 2, 2009. In that filing, the DOJ, on behalf of the FBI, and with the concurrence of the DHS, requested the Commission defer action on the Application until they completed their review of any national security, law enforcement or public safety implications of the Application.³¹ Subsequently, on December 8, 2009, the DOJ, FBI, and DHS submitted a letter asking the Commission to withdraw their request to defer action on the Application.³²

III. STANDARD OF REVIEW AND FRAMEWORK OF ANALYSIS

10. Pursuant to sections 214(a) and 310(d) of the Communications Act,³³ we must determine whether the Applicants have demonstrated that the proposed transfer of control of licenses and authorizations held by SkyTerra will serve the public interest, convenience, and necessity.³⁴ In making

²⁶ See October 19, 2009 Amendment.

²⁷ *Id.*

²⁸ See generally Harbinger February 26, 2010 Amendment.

²⁹ See Harbinger February 26, 2010 Amendment, Exhibit. Mr. Philip A. Falcone is the sole shareholder of HGW GP, which, in turn, is the sole shareholder of HGW US GP Corp. *Id.*

³⁰ See *SkyTerra Communications, Inc., Transferor, and Harbinger Capital Partners Funds, Transferee, Seek FCC Consent to Transfer Control of SkyTerra Subsidiary, LLC*, IB Docket No. 08-184, Public Notice, DA 09-996, 24 FCC Rcd 5226 (2009).

³¹ Letter from Kathryn Quinn, Attorney, National Security Division, U.S. Department of Justice, to the Federal Communications Commission, dated June 2, 2009.

³² Letter from Kathryn Quinn, Attorney, National Security Division, U.S. Department of Justice, to the Federal Communications Commission, dated December 8, 2009.

³³ 47 U.S.C. §§ 214(a), 310(d).

³⁴ Section 310(d) of the Act, 47 U.S.C. § 310(d), requires that we consider applications for transfer of Title III licenses under the same standard as if the proposed transferee were applying for licenses directly under section 308 of the Act, 47 U.S.C. § 308. See, e.g., *Applications for Consent to the Transfer of Control of Licenses, XM Satellite Radio Holdings Inc., Transferor, To Sirius Satellite Radio Inc., Transferee, MB Docket No. 07-57*, Memorandum Opinion and Order, 23 FCC Rcd 12348, 12363 ¶ 30 (2008) (*XM-Sirius Order*); *News Corp. and DIRECTV Group, Inc. and Liberty Media Corp. for Authority to Transfer Control*, 23 FCC Rcd 3265, 3276 ¶ 22 (2008) (“*Liberty* (continued....)”).

this determination, we first assess whether the proposed transaction complies with the specific provisions of the Act, other applicable statutes, and the Commission's rules. If the proposed transaction would not violate a statute or rule, we next consider whether it could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Communications Act or related statutes.³⁵ We then employ a balancing test weighing any potential public interest harms of the proposed transaction against any potential public interest benefits.³⁶ The Applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, will serve the public interest.³⁷ If we are unable to find that the proposed transaction serves the public interest for any reason, or if the record presents a substantial and material question of fact, we must designate the application for hearing.³⁸

11. Our public interest evaluation necessarily encompasses the "broad aims of the Communications Act,"³⁹ which include, among other things, a deeply rooted preference for preserving and enhancing competition in relevant markets, accelerating private sector deployment of advanced services, ensuring a diversity of license holdings, and generally managing spectrum in the public interest.⁴⁰ Our public interest analysis may also entail assessing whether the merger will affect the quality of communications services or will result in the provision of new or additional services to consumers.⁴¹ (Continued from previous page) _____

Media-DIRECTV Order"); *SBC Comm. Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, 20 FCC Rcd 18290, 18300 ¶ 16 (2005) ("*SBC-AT&T Order*"); *Verizon Comm., Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, 20 FCC Rcd 18433, 18443 ¶ 16 (2005) ("*Verizon-MCI Order*"); *General Motors Corporation and Hughes Electronics Corporation, Transferors, and The News Corporation Limited, Transferee*, MB Docket No. 03-124, Memorandum Opinion and Order, 19 FCC Rcd 473, 485, ¶ 18 (2004) (*News Corp.-Hughes Order*). Thus, we must examine the Applicants' qualifications to hold licenses. See *infra* Section IV.A.

³⁵ See, e.g., *XM-Sirius Order*, 23 FCC Rcd at 12364, ¶ 30; *Liberty Media-DIRECTV Order*, 23 FCC Rcd at 3276-77 ¶ 22; *SBC-AT&T Order*, 20 FCC Rcd at 18300, ¶ 16; *Verizon-MCI Order*, 20 FCC Rcd at 18443, ¶ 16.

³⁶ See, e.g., *XM-Sirius Order*, 23 FCC Rcd at 12364, ¶ 30; *Liberty Media-DIRECTV Order*, 23 FCC Rcd at 3277, ¶ 22; *SBC-AT&T Order*, 20 FCC Rcd at 18300, ¶ 16; *Verizon-MCI Order*, 20 FCC Rcd at 18443, ¶ 16; *News Corp.-Hughes Order*, 19 FCC Rcd at 483, ¶ 15.

³⁷ See, e.g., *XM-Sirius Order*, 23 FCC Rcd at 12364, ¶ 30; *Liberty Media-DIRECTV Order*, 23 FCC Rcd at 3277 ¶ 22; *SBC-AT&T Order*, 20 FCC Rcd at 18300, ¶ 16; *Verizon-MCI Order*, 20 FCC Rcd at 18443, ¶ 16; *Application of EchoStar Communications Corporation (a Nevada Corporation), General Motors Corporation, and Hughes Electronics Corporation (Delaware Corporations) (Transferors) and EchoStar Communications Corporation (a Delaware Corporation) (Transferee)*, CS Docket No. 01-348, Hearing Designation Order, 17 FCC Rcd 20559, 20574, ¶ 25 (2002) (*EchoStar-DirectTV Order*).

³⁸ We are not required, in any event, to designate for hearing applications for the transfer or assignment of Title II authorizations. See *ITT World Commc'ns, Inc. v. FCC*, 595 F.2d 897, 901 (2d Cir. 1979). We may do so, however, if we find that a hearing would be in the public interest. With respect to the applications to transfer licenses subject to Title III of the Act, however, if we are unable to find that the proposed transaction serves the public interest, or if the record presents a substantial and material question of fact, section 309(e) of the Communications Act requires that we designate the application for hearing. 47 U.S.C. § 309(e); see also *XM-Sirius Order*, 23 FCC Rcd at 12364, ¶ 30; *Liberty Media-DIRECTV Order*, 23 FCC Rcd at 3277, ¶ 22; *SBC-AT&T Order*, 20 FCC Rcd at 18300, ¶ 16; *Verizon-MCI Order*, 20 FCC Rcd at 18443, ¶ 16; *EchoStar-DirectTV Order*, 17 FCC Rcd at 20574, ¶ 25.

³⁹ See, e.g., *XM-Sirius Order*, 23 FCC Rcd at 12364, ¶ 31; *Liberty Media-DIRECTV Order*, 23 FCC Rcd at 3277 ¶ 23; *News Corp.-Hughes Order*, 19 FCC Rcd at 483, ¶ 16; *EchoStar-DIRECTV Order*, 17 FCC Rcd at 20575, ¶ 26.

⁴⁰ See Telecommunications Act of 1996, Pub. L. No. 104-104, § 706, 110 Stat. 56, 153 (1996 Act), codified at 47 U.S.C. § 157 nt; 47 U.S.C. §§ 254, 332(c)(7); 1996 Act, Preamble; *XM-Sirius Order*, 23 FCC Rcd at 12365, ¶ 31; *Liberty Media-DIRECTV Order*, 23 FCC Rcd at 3277-78, ¶ 23.

⁴¹ See, e.g., *XM-Sirius Order*, 23 FCC Rcd at 12365, ¶ 31; *Liberty Media-DIRECTV Order*, 23 FCC Rcd at 3277-78, ¶ 23.

In conducting this analysis, the Commission may consider technological and market changes, and the nature, complexity, and speed of change of, as well as trends within, the communications industry.⁴²

12. Our competitive analysis, which forms an important part of the public interest evaluation, is informed by, but not limited to, traditional antitrust principles.⁴³ The Commission and the DOJ each have independent authority to examine the competitive impacts of proposed communications mergers and transactions involving transfers of Commission licenses, but the standards governing the Commission's competitive review differ somewhat from those applied by the DOJ.⁴⁴ Like the DOJ, the Commission considers how a transaction will affect competition by defining a relevant market, looking at the market power of incumbent competitors, and analyzing barriers to entry, potential competition and the efficiencies, if any, that may result from the transaction. The DOJ, however, reviews telecommunications mergers pursuant to section 7 of the Clayton Act, and if it wishes to block a merger, it must demonstrate to a court that the merger may substantially lessen competition or tend to create a monopoly.⁴⁵ Under the Commission's review, the Applicants must show that the transaction will serve the public interest; otherwise the application is set for hearing. The DOJ's review is also limited solely to an examination of the competitive effects of the acquisition, without reference to other public interest considerations.⁴⁶ The Commission's competitive analysis under the public interest standard is somewhat broader. For example, the Commission considers whether a transaction will enhance, rather than merely preserve, existing competition, and takes a more extensive view of potential and future competition and its impact on the relevant market.⁴⁷

13. Our analysis recognizes that a proposed transaction may lead to both beneficial and harmful consequences.⁴⁸ For instance, combining assets may allow a firm to reduce transaction costs and offer new products, but it may also create market power, create or enhance barriers to entry by potential competitors, and create opportunities to disadvantage rivals in anticompetitive ways.⁴⁹ Our public interest authority enables us, where appropriate, to impose and enforce narrowly tailored, transaction-specific conditions that ensure that the public interest is served by the transaction.⁵⁰ Section 303(r) of the

⁴² See, e.g., *XM-Sirius Order*, 23 FCC Rcd at 12365, ¶ 31; *Liberty Media-DIRECTV Order*, 23 FCC Rcd at 3277-78, ¶ 23.

⁴³ See, e.g., *XM-Sirius Order*, 23 FCC Rcd at 12365, ¶ 32; *Liberty Media-DIRECTV Order*, 23 FCC Rcd at 3278, ¶ 24; *News Corp.-Hughes Order*, 19 FCC Rcd at 484, ¶ 17; *EchoStar-DIRECTV Order*, 17 FCC Rcd at 20575, ¶ 27.

⁴⁴ See, e.g., *XM-Sirius Order*, 23 FCC Rcd at 12365, ¶ 32; *Liberty Media-DIRECTV Order*, 23 FCC Rcd at 3278, ¶ 24; *Verizon-MCI Order*, 20 FCC Rcd at 18444, ¶ 18; *SBC-AT&T Order*, 20 FCC Rcd at 18302 ¶ 18. See also *Satellite Business Systems*, 62 FCC 2d 997, 1088 (1977), *aff'd sub nom. United States v. FCC*, 652 F.2d 72 (D.C. Cir. 1980) (*en banc*); *Northern Utilities Service Co. v. FERC*, 993 F.2d 937, 947-48 (1st Cir. 1993) (public interest standard does not require agencies "to analyze proposed mergers under the same standards that the Department of Justice . . . must apply").

⁴⁵ 15 U.S.C. § 18.

⁴⁶ See, e.g., *XM-Sirius Order*, 23 FCC Rcd at 12366, ¶ 32.

⁴⁷ See, e.g., *XM-Sirius Order*, 23 FCC Rcd at 12366, ¶ 32; *Liberty Media-DIRECTV Order*, 23 FCC Rcd at 3278 ¶ 25.

⁴⁸ See, e.g., *XM-Sirius Order*, 23 FCC Rcd at 12366, ¶ 33; *SBC-AT&T Order*, 20 FCC Rcd at 18302, ¶ 18; *Verizon-MCI Order*, 20 FCC Rcd at 18444-45, ¶ 18.

⁴⁹ See, e.g., *XM-Sirius Order*, 23 FCC Rcd at 12366, ¶ 33; *Liberty Media-DIRECTV Order*, 23 FCC Rcd at 3278-79, ¶ 25.

⁵⁰ See, e.g., *XM-Sirius Order*, 23 FCC Rcd at 12366, ¶ 33; *Liberty Media-DIRECTV Order*, 23 FCC Rcd at 3279, ¶ 26.

Communications Act authorizes the Commission to prescribe restrictions or conditions not inconsistent with law that may be necessary to carry out the provisions of the Act.⁵¹ Similarly, section 214(c) of the Act authorizes the Commission to attach to the certificate “such terms and conditions as in its judgment the public convenience and necessity may require.”⁵² Indeed, unlike the role of antitrust enforcement agencies, our public interest authority enables us to rely upon our extensive regulatory and enforcement experience to impose and enforce conditions to ensure that the transaction will yield overall public interest benefits.⁵³ Further, the Commission has held that it will impose conditions to remedy harms that arise from the transaction and that are related to the Commission’s responsibilities under the Act and related statutes.⁵⁴

IV. COMPLIANCE WITH THE COMMUNICATIONS ACT AND COMMISSION RULES AND POLICIES

A. Character Qualifications of the Applicants

14. First, we must determine whether the Applicants meet the requisite qualifications to hold and transfer licenses under section 310(d) of the Act and the Commission’s rules. In general, when evaluating transfer of control applications under section 310(d), we do not re-evaluate the qualifications of the transferor.⁵⁵ The exception to this rule occurs where issues related to basic qualifications have been designated for hearing by the Commission or have been sufficiently raised in petitions to warrant the designation of a hearing.⁵⁶ This is not the case here, so we need not re-evaluate SkyTerra Communications’ basic qualifications.

15. As for the basic qualifications of Harbinger, the transferee in this proposed transaction, section 310(d) of the Act requires us to consider the qualifications of the proposed transferee as if the

⁵¹ 47 U.S.C. § 303(r); *see also XM-Sirius Order*, 23 FCC Rcd at 12366, ¶ 33; *Liberty Media-DIRECTV Order*, 23 FCC Rcd at 3279, ¶ 26; *U.S. v. Southwestern Cable Co.*, 392 U.S. 157, 178 (1968) (holding that section 303(r) permits the Commission to order a cable company not to carry broadcast signal beyond station’s primary market); *United Video, Inc. v. FCC*, 890 F.2d 1173, 1182-83 (D.C. Cir. 1989) (affirming syndicated exclusivity rules adopted pursuant to section 303(r) authority).

⁵² 47 U.S.C. § 214(c); *see also SBC-AT&T Order*, 20 FCC Rcd at 18303 ¶ 19; *Verizon-MCI Order*, 20 FCC Rcd at 18445, ¶ 19.

⁵³ *See, e.g., XM-Sirius Order*, 23 FCC Rcd at 12366, ¶ 33; *Liberty Media-DIRECTV Order*, 23 FCC Rcd at 3279 ¶ 26; *News Corp.-Hughes Order*, 19 FCC Rcd at 477, ¶ 5; *see also Schurz Communications, Inc. v. FCC*, 982 F.2d 1043, 1049 (7th Cir. 1992) (discussing Commission’s authority to trade off reduction in competition for increase in diversity in enforcing public interest standard).

⁵⁴ *See, e.g., Liberty Media-DIRECTV Order*, 23 FCC Rcd at 3279 ¶ 26; *SBC-AT&T Order*, 20 FCC Rcd at 18303, ¶ 19; *Verizon-MCI Order*, 20 FCC Rcd at 18445, ¶ 19.

⁵⁵ *See Verizon-ALLTEL*, 23 FCC Rcd at 17465, ¶ 33; *AT&T-Dobson*, 22 FCC Rcd at 20302-04, ¶ 11; *DoCoMo-Guam Cellular Order*, 21 FCC Rcd at 13590, ¶ 14; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11536, ¶ 17; *Sprint Nextel-Nextel Partners Order*, 21 FCC Rcd at 7362, ¶ 10; *SBC-AT&T Order*, 20 FCC Rcd at 18379, ¶ 171; *Verizon-MCI Order*, 20 FCC Rcd at 18526, ¶ 183; *Sprint-Nextel Order*, 20 FCC Rcd at 13979, ¶ 24; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13063-4, ¶ 18; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546, ¶ 44; *Deutsche Telekom/VoiceStream Order*, 16 FCC Rcd at 9790, ¶ 19.

⁵⁶ *See Verizon-Alltel*, 23 FCC Rcd at 17465, ¶ 33; *AT&T-Dobson*, 22 FCC Rcd at 20302, ¶ 11; *DoCoMo-Guam Cellular Order*, 21 FCC Rcd 13590, ¶ 14; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11536-7, ¶ 17; *Sprint Nextel-Nextel Partners Order*, 21 FCC Rcd at 7362, ¶ 10; *SBC-ATT Order*, 20 FCC Rcd at 18379, ¶ 171; *Verizon-MCI Order*, 20 FCC Rcd at 18526, ¶ 183; *Sprint-Nextel Order*, 20 FCC Rcd at 13979, ¶ 24; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13063-4, ¶ 18; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546, ¶ 44; *Deutsche Telekom/VoiceStream Order*, 16 FCC Rcd at 9790, ¶ 19.

transferee were applying for the license directly under section 308 of the Act.⁵⁷ We see nothing in the record that suggests that Harbinger would not be legally, technically or financially qualified to be a Commission licensee. Accordingly, we find that Harbinger is qualified to hold the licenses and authorizations that are being transferred in the proposed transaction.

B. Foreign Ownership

16. The Applicants request a declaratory ruling, pursuant to section 310(b)(4) of the Act, that it is consistent with the public interest for Harbinger and any commonly-controlled funds to own indirectly 100 percent of the issued and outstanding stock of SkyTerra Communications, which, in turn, indirectly wholly owns and controls SkyTerra, a common carrier radio licensee.⁵⁸ The Applicants contend that the requested declaratory ruling is warranted under the Commission's policies because: (1) a U.S. citizen controls the Master Fund and Special Situations Fund (together, the "Harbinger Funds"); (2) each of the Harbinger Funds has its principal place of business in the United States or another World Trade Organization ("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.⁵⁹ For the reasons stated below, we conclude, pursuant to section 310(b)(4) of the Act, that the public interest would be served by granting the petition for declaratory ruling to allow Harbinger to increase its ownership interests in SkyTerra Communications from currently authorized levels⁶⁰ to 100 percent of its equity and voting interests, subject to the conditions set forth herein.

1. Legal Standard for Foreign Ownership of Radio Licensees

17. We review the foreign ownership of SkyTerra under section 310(b)(4) of the Act and the Commission's foreign ownership policies established in the *Foreign Participation Order*.⁶¹ As part of that analysis, we consider any national security, law enforcement, foreign policy, or trade policy concerns raised by the proposed transaction.⁶² Relying on Commission precedent, we find that the indirect foreign

⁵⁷ Section 308 requires that applicants for Commission licenses set forth such facts as the Commission may require as to citizenship, character, and financial, technical, and other qualifications. 47 U.S.C. § 308. *See also Verizon-Alltel*, 23 FCC Rcd at 17465, ¶ 33; *AT&T-Dobson*, 22 FCC Rcd at 20303, ¶ 12; *DoCoMo-Guam Cellular Order*, 21 FCC Rcd at 13590, ¶ 14; *ALLTEL-Midwest Wireless Order*, 21 FCC Rcd at 11536-7, ¶ 17; *Sprint Nextel-Nextel Partners Order*, 21 FCC Rcd at 7362, ¶ 10; *SBC-ATT Order*, 20 FCC Rcd at 18379, ¶ 171; *Verizon-MCI Order*, 20 FCC Rcd at 18526, ¶ 183; *ALLTEL-Western Wireless Order*, 20 FCC Rcd at 13063-4, ¶ 18; *Cingular-AT&T Wireless Order*, 19 FCC Rcd at 21546, ¶ 44.

⁵⁸ SkyTerra Narrative, Attachment B at 1. The petition for declaratory ruling is appended to the SkyTerra Narrative as Attachment B. Harbinger submitted two amendments to the SkyTerra Narrative to revise its description of the proposed transaction. *See* February 26, 2010 Amendment; October 19, 2009 Amendment. Harbinger also supplemented its petition for declaratory ruling on August 7, 2009 ("August 7, 2009 Supplement"). All citations in this Memorandum Opinion and Order and Declaratory Ruling to the SkyTerra Narrative, Attachment B at Annexes 1-3 and 7 refer to the updated Annexes filed on August 7, 2009.

⁵⁹ SkyTerra Narrative, Attachment B at 2.

⁶⁰ *See supra* ¶ 5.

⁶¹ *See Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, Report and Order and Order on Reconsideration*, IB Docket Nos. 97-142 and 95-22, 12 FCC Rcd 23891 (1997) ("*Foreign Participation Order*"), Order on Reconsideration, 15 FCC Rcd 18158 (2000).

⁶² The Commission considers national security, law enforcement, foreign policy, and trade policy concerns when analyzing foreign investment pursuant to sections 310(b)(4) and 310(d). *Foreign Participation Order*, 12 FCC Rcd at 23918-21, ¶¶ 59-66.

ownership of SkyTerra does not raise any issues under section 310(a) or 310(b)(1)-(3) of the Act.⁶³ Our analysis focuses on issues raised under section 310(b)(4).

18. Section 310(b)(4) of the Communications Act establishes a 25 percent benchmark for investment by foreign individuals, corporations and governments in U.S.-organized entities that control U.S. common carrier radio licensees. This section also grants the Commission discretion to allow higher levels of foreign ownership if it determines that such ownership is not inconsistent with the public interest.⁶⁴ The presence of aggregated alien equity or voting interests in a common carrier licensee's parent in excess of 25 percent triggers the applicability of section 310(b)(4)'s statutory benchmark.⁶⁵ Once the benchmark is triggered, section 310(b)(4) directs the Commission to determine whether the "public interest will be served by the refusal or revocation of such license."⁶⁶

19. In the *Foreign Participation Order*, the Commission concluded that the public interest would be served by permitting greater investment by individuals or entities from WTO Member countries in U.S. common carrier and aeronautical fixed and aeronautical en route radio licensees.⁶⁷ Therefore, with respect to indirect foreign investment from WTO Members, the Commission adopted a rebuttable presumption that such investment generally raises no competitive concerns.⁶⁸ In evaluating an applicant's

⁶³ Section 310(a) of the Act prohibits any radio license from being "granted to or held by" a foreign government or its representative. 47 U.S.C. § 310(a). In this case, no foreign government or its representative holds or will hold any of the subject radio licenses. Section 310(b)(1)-(2) of the Act prohibits common carrier, broadcast and aeronautical fixed or aeronautical en route radio licenses from being "granted to or held by" aliens, or their representatives, or foreign corporations. 47 U.S.C. § 310(b)(1)-(2). We find that no alien, representative, or foreign corporation holds or will hold any common carrier radio licenses in this case. Accordingly, we find that proposed transaction is not inconsistent with the foreign ownership provisions of sections 310(a) or 310(b)(1)-(2) of the Act. *Applications of VoiceStream Wireless Corp., Powertel, Inc., Transferors, and Deutsche Telekom AG, Transferee*, IB Docket No. 00-187, Memorandum Opinion and Order, FCC 01-142, 16 FCC Rcd 9779, 9804-09, ¶¶ 38-48 (2001). Additionally, because the proposed foreign ownership interests in SkyTerra would be held through SkyTerra's controlling U.S. parent company, SkyTerra Communications, the proposed transaction does not trigger section 310(b)(3) of the Act, which places a 20% limit on alien, foreign corporate or foreign government ownership of entities that themselves hold common carrier, broadcast and aeronautical fixed or aeronautical en route Title III licenses. Compare 47 U.S.C. § 310(b)(3) with § 310(b)(4). See *Request for Declaratory Ruling Concerning the Citizenship Requirements of Sections 310(b)(3) and (4) of the Communications Act of 1934, as amended*, Declaratory Ruling, 103 F.C.C. 2d 511 (1985) ("*Wilner & Scheiner P*"), recon. in part, 1 FCC Rcd 12 (1986).

⁶⁴ See 47 U.S.C. § 310(b)(4) (providing that "No broadcast or common carrier or aeronautical en route or aeronautical fixed radio station license shall be granted to or held by ... any corporation directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government, or representative thereof, or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest would be served by the refusal or revocation of such license.").

⁶⁵ The calculation of foreign ownership interests under section 310(b)(4) is a two-pronged analysis in which the Commission examines separately the equity interests and the voting interests in the licensee's direct or indirect parent. See *BBC License Subsidiary L.P.*, Memorandum Opinion and Order, 10 FCC Rcd 10968, 10973, ¶ 22 (1995) ("*BBC License Subsidiary*"). The Commission calculates the equity interest of each foreign investor in the parent and then aggregates these interests to determine whether the sum of the foreign equity interests exceeds the statutory benchmark. Similarly, the Commission calculates the voting interest of each foreign investor in the parent and aggregates these voting interests. *Id.* at 10972, ¶ 20, 10973-74, ¶¶ 22-25.

⁶⁶ 47 U.S.C. § 310(b)(4).

⁶⁷ *Foreign Participation Order*, 12 FCC Rcd at 23896, ¶ 9, 23913, ¶ 50, 23940, ¶¶ 111-12.

request for approval of foreign ownership interests under section 310(b)(4), the Commission uses a “principal place of business” test to determine the nationality or “home market” of foreign investors.⁶⁹

20. In light of Commission policies adopted in the *Foreign Participation Order*, we begin our evaluation of the indirect foreign ownership of SkyTerra under section 310(b)(4) by calculating the foreign equity and voting interests that will be held in its U.S. parent, SkyTerra Communications, upon consummation of the proposed transaction.⁷⁰ We then determine whether these foreign interests properly are ascribed to individuals or entities that are citizens of, or have their principal places of business in, WTO Member countries.

2. Attribution of Foreign Ownership Interests and Declaratory Ruling

21. Upon consummation of the proposed transaction, all of the issued and outstanding shares of SkyTerra Communications will be held directly by HGW US, a Delaware limited partnership.⁷¹ HGW US will be majority owned (99.9%) by its sole limited partner, HGW, which is a limited partnership organized in the Cayman Islands.⁷² Nearly all (99.9%) of HGW’s equity interests will be held collectively by the Master Fund and Special Situations Fund.⁷³ The remaining 0.1 percent equity interest in HGW will be held by its general partner, HGW GP, which is a Cayman Islands exempted company whose sole shareholder is Philip A. Falcone (“Mr. Falcone”).⁷⁴ Mr. Falcone, a U.S. citizen, ultimately

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⁶⁸ *Id.* The Commission stated, in the *Foreign Participation Order*, that it will deny an application if it finds that more than 25% of the ownership of an entity that controls a common carrier radio licensee is attributable to parties whose principal place(s) of business are in non-WTO Member countries that do not offer effective competitive opportunities to U.S. investors in the particular service sector in which the applicant seeks to compete in the U.S. market, unless other public interest considerations outweigh that finding. *See id.* at 23946, ¶ 131.

⁶⁹ To determine a foreign entity’s home market for purposes of the public interest determination under section 310(b)(4), the Commission will identify and balance the following factors: (1) the country of a foreign entity’s incorporation, organization or charter, (2) the nationality of all investment principals, officers, and directors, (3) the country in which the world headquarters is located, (4) the country in which the majority of the tangible property, including production, transmission, billing, information, and control facilities, is located, and (5) the country from which the foreign entity derives the greatest sales and revenues from its operations. *See id.* at 23941, ¶ 116 (citing *Foreign Carrier Entry Order*, 11 FCC Rcd at 3951, ¶ 207).

⁷⁰ In calculating attributable alien equity interests in a parent company, the Commission uses a multiplier to dilute the percentage of each investor’s equity interest in the parent company when those interests are held through intervening companies. The multiplier is applied to each link in the vertical ownership chain, regardless of whether any particular link in the chain represents a controlling interest in the company positioned in the next lower tier. *See BBC License Subsidiary*, 10 FCC Rcd at 10973-74, ¶¶ 24-25. By contrast, in calculating alien voting interests in a parent company, the multiplier is not applied to any link in the vertical ownership chain that constitutes a controlling interest in the company positioned in the next lower tier. *Id.* at 10973, ¶ 23; *see also Wilner & Scheiner I*, 103 F.C.C. 2d at 522, ¶ 19. In circumstances where the voting interests in the U.S. parent of a common carrier licensee are held through intervening partnerships, a general partner is considered to hold the same voting interest as the partnership holds in the company positioned below it. Similarly, in the absence of a demonstration that a limited partner effectively is insulated from active involvement in partnership affairs, a limited partner will be deemed to hold the same voting interest as the partnership holds in the company positioned below it. *See Applications of XO Communications, Inc.*, IB Docket No. 02-50, Memorandum Opinion, Order and Authorization, DA 02-2512, 17 FCC Rcd 19212, 19221, 19222-3, ¶¶ 22, 25 (IB/WCB/WTB 2002) (“*XO Communications*”).

⁷¹ *See* February 26, 2010 Amendment.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

controls the Master Fund and Special Situations Fund.⁷⁵ The remaining 0.1 percent ownership interest in HGW US will be held by its general partner, HGW US GP, which is a Delaware corporation whose sole shareholder is HGW GP.⁷⁶ The Applicants state that Harbinger has not yet determined the exact ownership percentages that each of the Master Fund and Special Situations Fund will hold in HGW. The respective ownership interests of the two funds at closing “will vary by asset class and depending upon market conditions and other factors.”⁷⁷ Because Harbinger has not yet determined the respective equity interests to be held indirectly in SkyTerra Communications by the Master Fund and Special Situations Fund, we assume, for purposes of our foreign ownership analysis, that each fund may hold indirectly (through HGW and HGW US) up to and including 100 percent of the equity interests in SkyTerra Communications.⁷⁸ This approach provides us with the most conservative estimate of the level of foreign equity and voting interests that may be held in SkyTerra Communications upon consummation of the proposed transaction.⁷⁹

22. *HGW and HGW GP.* As discussed above, HGW US will be the sole shareholder of SkyTerra Communications. As such, HGW US will hold 100 percent of the equity and voting interests in SkyTerra Communications. Nearly all of the equity interests in HGW US (99.9%, rounding to 100%)⁸⁰ will be held by its sole limited partner, HGW, which is a Cayman Islands limited partnership. HGW’s general partner, HGW GP, is also organized in the Cayman Islands and will hold a 0.01 percent equity interest in HGW. Consistent with our foreign ownership case precedent, we attribute to HGW (as the sole limited partner of HGW US) a 100 percent equity and voting interest in SkyTerra Communications.⁸¹ We also attribute to HGW’s general partner, HGW GP, a 0.1 percent equity interest and a 100 percent voting interest in SkyTerra Communications.⁸² We find that these equity and voting interests are properly

⁷⁵ *Id.*; see also SkyTerra Narrative, Attachment B at 6.

⁷⁶ See February 26, 2010 Amendment.

⁷⁷ October 19, 2009 Amendment.

⁷⁸ In order to simplify our calculation of indirect foreign ownership interests that will be held in SkyTerra Communications upon closing, we treat the 99.99% limited partnership interest that the Master Fund and Special Situations Fund will hold collectively in HGW as a 100% equity interest. Similarly, we treat the 99.99% limited partnership interest that HGW will hold in HGW US as a 100% equity interest, and we disregard the 0.1% equity interest that HGW US GP will hold in HGW US.

⁷⁹ Although the Master Fund and Special Situations Fund will hold their equity investment in SkyTerra Communications indirectly through two limited partnerships (HGW and HGW US) that ultimately are controlled by Mr. Falcone (as the sole shareholder of HGW’s general partner), we attribute to each fund - and to their respective passive, equity investors - indirect voting interests in SkyTerra Communications that are equal to their attributable indirect equity interests. See *Intelsat Ltd., Transferor, and Zeus Holdings Limited, Transferee*, IB Docket No. 04-366, Order and Authorization, DA 04-4034, 19 FCC Rcd 24820, 24845, ¶ 5 (IB/WTB/OET 2004) (“We make these calculations in recognition of the potential influence these foreign limited partners may have over partnership affairs.”); *XO Communications*, 17 FCC Rcd at 19221, ¶ 25. See also *supra* note 70.

⁸⁰ See *supra* note 78.

⁸¹ See *supra* notes 65, 70.

⁸² When evaluating foreign voting interests in the U.S. parent company of a common carrier licensee, it is possible that multiple investors will be treated as holding the same voting interest in a U.S. parent company where the investment is held through multiple intervening holding companies. Our purpose in identifying the citizenship of the specific individuals or entities that hold these interests is not to increase the aggregate level of foreign investment, but rather to determine whether any particular interest that a foreign investor proposes to acquire raises potential risks to competition or other public interest concerns, such as national security or law enforcement concerns. See *Foreign Participation Order*, 12 FCC Rcd at 23940-41, ¶¶ 111-15.

treated as investment from a WTO Member country for purposes of our public interest analysis under section 310(b)(4) of the Act and the Commission's foreign ownership policies adopted in the *Foreign Participation Order*. HGW and HGW GP are both organized in the Cayman Islands, which we consider to be a WTO Member country.⁸³ HGW and HGW GP have their world headquarters in the United States, their investment principals, officers and directors are citizens of the United States and other WTO Member countries (specifically, the Cayman Islands, Ireland and the United Kingdom), and they are ultimately controlled by Mr. Falcone, a U.S. citizen.⁸⁴ We also find, as explained below, that the vast majority of the equity and voting interests that will be held directly and indirectly in HGW upon closing are properly ascribed to individuals that are citizens of, and entities that have their principal places of business in, WTO Member countries.⁸⁵

23. *The Master Fund.* The Master Fund is a Cayman Islands exempted company. We assume, for purposes of our analysis, that the Master Fund may hold indirectly (through HGW and HGW US) a 100 percent indirect equity and voting interest in SkyTerra Communications.⁸⁶ Based on our review of the record, we find that the Master Fund's indirect ownership of SkyTerra Communications is properly treated as investment from a WTO Member country. According to Harbinger, all investment decisions for the Master Fund are made in the United States, in New York City, and the same is true for the day-to-day management and control over the entity's investments and operation of those investments.⁸⁷ The Master Fund's investment principals, officers and directors are citizens of the United States and other WTO Member countries (the Cayman Islands, Ireland, and the United Kingdom), and ultimate control of the Master Fund resides with Mr. Falcone, a U.S. citizen.⁸⁸ The majority of the Master Fund's shares (approximately 84.03%) are held by Harbinger Capital Partners Offshore Fund I, Ltd. ("Offshore Fund I")⁸⁹ and Cayman Islands entities co-owned by Offshore Fund I and certain "Redeemed Investors."⁹⁰

⁸³ See *Cable & Wireless USA, Inc., Application for Authority to Operate as a Facilities-Based Carrier in Accordance with the Provisions of Section 63.18(e) of the Rules Between the United States and Bermuda*, Order, Authorization and Certificate, 15 FCC Rcd 3050, 3052 (Int'l Bur. 2000); *Bell Atlantic New Zealand Holdings, Inc. and Pacific Telecom, Inc., Transferee*, Order and Authorization, DA 03-3563, 18 FCC Rcd 23140, ¶ 25, n.80 (Int'l Bur., WCB, WTB 2003) (relying on an opinion provided by the U.S. Department of State to conclude that the 1994 Marrakesh Agreement Establishing the World Trade Organization applies to the United Kingdom's overseas territories, including the Cayman Islands).

⁸⁴ Neither HGW nor HGW GP has any tangible property, sales or revenues. See February 26, 2010 Amendment; October 19, 2009 Amendment.

⁸⁵ See *infra* ¶¶ 23-25.

⁸⁶ See *supra* ¶ 21.

⁸⁷ SkyTerra Narrative, Attachment B, Annex 2 at n.1. Harbinger states that there is no official "world headquarters" for the Master Fund or any of its foreign-organized feeder funds.

⁸⁸ See SkyTerra Narrative, Attachment B at 6. The Master Fund has delegated broad investment management authority under an Investment Management Agreement to Harbinger Capital Partners, LLC ("Offshore Manager"), a Delaware limited liability company that is ultimately controlled by Mr. Falcone. *Id.* Mr. Falcone holds a 50% voting interest in Offshore Manager and is the sole member of Harbinger Holdings, LLC, a Delaware limited liability company that holds the remaining 50% voting interest in Offshore Manager. *Id.*, Annex 3 at 1.

⁸⁹ Like the Master Fund, the Offshore Fund has delegated broad investment management authority to Offshore Manager, which is ultimately controlled by Mr. Falcone. See *supra* note 88.

⁹⁰ The Cayman Islands entities are Harbinger Class L Holdings (Cayman), Ltd. ("Class L Holdings Cayman") and Harbinger Class PE Holdings (Cayman), Ltd. ("Class PE Holdings Cayman"). See SkyTerra Narrative, Attachment B, Annex 3 at 1; see also *id.*, Annex 2 (providing a principal place of business showing for Offshore Fund I, Class L Holdings Cayman and Class PE Holdings Cayman). Class L Holdings Cayman and Class PE Holdings Cayman are (continued....)

Most of the remaining shares of the Master Fund (approximately 15.68%) are held by Harbinger Capital Partners Fund I, L.P. (“Onshore Fund I”), a Delaware limited partnership that is controlled by Mr. Falcone,⁹¹ and Delaware entities co-owned by Onshore Fund I and certain “Redeemed Investors.”⁹² An additional 0.28 percent of the Master Funds’ shares are held, as of May 31, 2009, by Harbinger Capital Partners Offshore Fund II, Ltd. (“Offshore Fund II”), one of two funds created to facilitate new investment in the Master Fund.⁹³ According to Petitioners, all of the equity investment in Offshore Fund I, Onshore Fund I, and Offshore Fund II is properly ascribed to citizens of, or entities that have their principal places of business in, the United States and other WTO signatories, except for seven investment funds from the Bahamas that hold in the aggregate a 0.50 percent interest in Offshore Fund I.⁹⁴

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subsidiaries of Offshore Fund I that were established in 2008 to hold Offshore Fund I’s *pro rata* portion of the Class LU shares and the Class PE shares of the Master Fund. *Id.*, Annex 3 at nn.7 & 8. Harbinger explains that the Class LU shares represent an undivided interest in the ultimate net value of certain assets of the Master Fund with exposure to bankrupt Lehman Brothers entities; the Class PE shares represent an undivided interest in the Master Fund’s private equity and certain other illiquid assets. *Id.* Originally, Offshore Fund I held 100% of the interests in Class L Holdings Cayman and Class PE Holdings Cayman but, as investors in Offshore Fund I have redeemed their shares after the formation of these entities, the redeeming investors have received, in addition to cash proceeds, partial in-kind distributions representing a *pro rata* portion of such investor’s proportional interest in Class L Holdings Cayman and Class PE Holdings Cayman. Although the interests held in Class L Holdings Cayman and Class PE Holdings Cayman represent an interest in the Master Fund, these Offshore Fund subsidiaries are not entitled to any interest in the SkyTerra Communications shares acquired as a result of the proposed transaction. *Id.*

⁹¹ SkyTerra Narrative, Attachment B, Annex 3 at 1. The general partner of Onshore Fund I is Harbinger Capital Partners GP, LLC, a Delaware limited liability company. The Managing Member of Harbinger Capital Partners GP, LLC is Harbinger Holdings LLC, whose sole member is Mr. Falcone. Harbinger Holdings, LLC and Mr. Falcone each hold a 50% voting interest in Harbinger Capital Partners GP, LLC. *Id.*

⁹² The Delaware entities are Harbinger Class L Holdings (U.S.), LLC (“Class L Holdings US”) and Harbinger Class PE Holdings (U.S.), Trust (“Class PE Holdings US”). *See* SkyTerra Narrative, Attachment B, Annex 3 at 1; *see also id.*, Annex 2 (providing a principal place of business showing for Onshore Fund I, Class L Holdings US and Class PE Holdings US). Class L Holdings US and Class PE Holdings US are subsidiaries of Onshore Fund I that were established in 2008 to hold Onshore Fund I’s *pro rata* portion of the Class LU shares and the Class PE shares of the Master Fund. *Id.*, Annex 3 at nn.7 & 8. Harbinger explains that the Class LU shares represent an undivided interest in the ultimate net value of certain assets of the Master Fund with exposure to bankrupt Lehman Brothers entities; the Class PE shares represent an undivided interest in the Master Fund’s private equity and certain other illiquid assets. *Id.* Originally, Onshore Fund I held 100% of the interests in Class L Holdings US and Class PE Holdings US but, as investors in Onshore Fund I have redeemed their shares after the formation of these entities, the redeeming investors have received, in addition to cash proceeds, partial in-kind distributions representing a *pro rata* portion of such investor’s proportional interest in Class L Holdings US and Class PE Holdings US. Although the interests held in Class L Holdings Cayman and Class PE Holdings Cayman represent an interest in the Master Fund, these Onshore Fund I subsidiaries are not entitled to any interest in the SkyTerra Communications shares acquired as a result of the proposed transaction. *Id.*

⁹³ The two funds established to hold new investment in the Master Fund are Harbinger Capital Partners Offshore Fund II, Ltd. (which holds the 0.28% interest in the Master Fund through its wholly-owned subsidiary, Harbinger Capital Partners Intermediate Fund II, Ltd., both of which are Cayman Islands entities) and Harbinger Capital Partners Fund II, L.P. (a Delaware limited partnership). *See* SkyTerra Narrative, Attachment B, Annex 3 at 1 & 3 n.9.

⁹⁴ SkyTerra Narrative, Attachment B at 5; *see also id.*, Annex 3 at 1 & 2 n.5. According to Petitioners, Offshore Fund I’s investors consist of: (1) individuals that are citizens of the United States (0.08%); (2) individuals that are citizens of Canada, China, Cayman Islands, Liechtenstein, and Switzerland (0.97%); (3) banks/insurance companies/pension plans and foundations/endowments organized in the United States and controlled by U.S. citizens (6.73%); (4) banks/insurance companies/pension plans and foundations/endowments controlled by citizens (continued....)

24. *The Harbinger Special Situations Fund.* The Special Situations Fund is organized as a Delaware limited partnership. As with the Master Fund, we assume that the Special Situations Fund may hold indirectly (through HGW and HGW US) 100 percent of the indirect equity and voting interests in SkyTerra Communications.⁹⁵ We find that these equity and voting interests are properly ascribed to citizens of, and entities that principally conduct business in, the United States and other WTO Member countries. The general partner of Special Situations Fund is Harbinger Capital Partners Special Situations GP, LLC (“Special Fund GP”), a Delaware limited liability company that holds a 9.3 percent equity interest in the Special Situations Fund. Special Fund GP is ultimately controlled by Mr. Falcone.⁹⁶ The majority of the limited partnership interests in the Special Situations Fund (62.26 %) are held by Harbinger Capital Partners Special Situations Offshore Fund, L.P. (“Special Offshore Fund”), a Cayman Islands limited partnership.⁹⁷ Harbinger Capital Partners SSF CFF, Ltd. (“Harbinger Capital SSF”), a Cayman Islands exempted company, holds a 1.62 percent limited partnership interest in the Special Situations Fund.⁹⁸ According to information provided by the Petitioners, all of the equity investors in the Special Offshore Fund⁹⁹ and in Harbinger Capital SSF¹⁰⁰ are citizens of, or entities that have their

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of, or organized in, Bermuda, Canada, Cayman Islands, Channel Islands, France, Luxembourg, Norway, Sweden, Switzerland, the Netherlands and the United Kingdom (15.51%); (5) other investors that are organized in the United States and have their principal place of business in the United States (4.45%); and (6) other investors that are organized in a foreign country or have their principal place of business in a foreign country (72.26%) (United Arab Emirates, Australia, Bahrain, Bermuda, Brazil, British Virgin Islands, Canada, Cayman Islands, Channel Islands, Chile, France, Italy, Ireland, Japan, Luxembourg, Netherlands Antilles, Norway, Panama, Singapore, Spain, Switzerland, the Bahamas, the Netherlands, and the United Kingdom). *See id.*, Annex 1 at 2. The Petition classifies Partners Fund I’s investors as consisting of: (1) individuals that are citizens of the United States (10.40%); (2) banks/insurance companies/pension plans and foundations/endowments that are organized in the United States and controlled by U.S. citizens (11.70%); and (3) other investors that are organized in the United States and have their principal place of business in the United States (77.90%). *See id.*, Annex 1 at 1. In addition, as of May 31, 2009, investment funds from France, Ireland, and Switzerland held a collective interest of 0.28% in the Master Fund through Harbinger Capital Partners Offshore Fund II, Ltd. *See id.*, Annex 1 at 11, Annex 3 at 1, & Annex 7.

⁹⁵ *See supra* ¶ 21.

⁹⁶ SkyTerra Narrative, Attachment B at 5. Special Fund GP is controlled by two of its members, each of which has 50% voting interest: Phillip A. Falcone and Harbinger Holdings, LLC, the Delaware limited liability company that is ultimately controlled by Mr. Falcone. *See supra* nn. 88, 91; *see also id.*, Annex 3 at 4. Petitioners represent that Special Fund GP’s direct and indirect equity investors are all U.S. citizens. *Id.*

⁹⁷ The Special Offshore Fund is ultimately controlled by Mr. Falcone through Harbinger Holdings, LLC. SkyTerra Narrative, Attachment B, Annex 3 at 4.

⁹⁸ SkyTerra Narrative, Attachment B, at 6; *see id.*, Annex 3 at 4.

⁹⁹ SkyTerra Narrative, Attachment B at 6. The Special Offshore Fund’s investors consist of: (1) individuals that are citizens of the United States (0.13%); (2) banks, insurance companies, pension plans and foundations/endowments organized in the United States and controlled by U.S. citizens (9.38%); (3) banks, insurance companies, pension plans and foundations/endowments controlled by foreign citizens or organized in foreign countries (22.07%) (Bermuda, British Virgin Islands, Cayman Islands, Finland, Luxembourg, Switzerland, and the Netherlands); (4) other investors that are organized in the United States and have their principal place of business in the United States (2.21%); and (5) other investors that are organized in a foreign country or have their principal place of business in a foreign country (66.20%) (British Virgin Islands, Channel Islands, Canada, Cayman Islands, Germany, Guernsey, Ireland, Italy, Liechtenstein, Luxembourg, Netherlands Antilles, Norway, Panama, Switzerland, and the Netherlands). *See id.*, Annex 1 at 4.

¹⁰⁰ SkyTerra Narrative, Attachment B, Annex 1 at 5. Harbinger Capital SSF’s investors consists of: (1) banks, insurance companies, pension plans and foundations/endowments controlled by foreign citizens or organized in foreign countries (21.36%) (Cayman Islands); (2) other investors that are organized in the United States and have (continued....)

principal places of business in, the United States and other WTO Member countries. The Petitioners represent that the remaining limited partnership interests in the Special Situations Fund (26.82 %) are widely dispersed and properly ascribed to U.S. investors.¹⁰¹

25. Based on the record before us, we find that the vast majority of the equity and voting interests in the Master Fund and Special Situations Fund are properly ascribed to individuals or entities that are citizens of, or that principally conduct business in, WTO Member countries for purposes of our public interest analysis under section 310(b)(4) of the Act and the policies adopted in the *Foreign Participation Order*.¹⁰² Applying the Commission's attribution principles for calculating foreign ownership under section 310(b), we find that investors who are from non-WTO Member countries will hold indirectly no more than a 0.42 percent equity interest and 0.50 percent voting interest in SkyTerra Communications.¹⁰³

26. Based on these findings, we conclude that Harbinger is entitled to a rebuttable presumption that following consummation of the proposed transaction, the indirect foreign ownership in SkyTerra will not pose a risk to competition in the U.S. market, and we find no credible evidence in the record to rebut this presumption.¹⁰⁴ In addition, we have received no opposition to or comment on the Petition from the Executive Branch.¹⁰⁵ Therefore, pursuant to section 310(b)(4) of the Act and the policies adopted in the *Foreign Participation Order*, we grant Harbinger's Petition, as amended, subject to the limitations specified below.

27. Specifically, this ruling permits HGW (and HGW GP, as a 0.1% general partner of HGW), the Master Fund and the Special Situations Fund to hold, individually and collectively, up to and including 100 percent of the equity and voting interests in SkyTerra through share ownership of its parent, SkyTerra Communications. With respect to foreign interests held directly or indirectly in the Master Fund and Special Situations Fund, this ruling authorizes only the foreign ownership interests described in the Petition (including Annexes 1-3 and 7, as updated on August 7, 2009). This ruling does not authorize

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their principal place of business in the United States (34.82%); and (3) other investors that are organized in a foreign country or have their principal place of business in a foreign country (43.83%) (Cayman Islands). *See id.*, Annex 1 at 5.

¹⁰¹ SkyTerra Narrative, Attachment B, Annex 3 at 4.

¹⁰² *See supra* ¶¶ 17-20.

¹⁰³ *See Foreign Ownership Guidelines for FCC Common Carrier and Aeronautical Radio Licenses*, Public Notice, DA 04-3610, 19 FCC Rcd 22612, 22627-33 (Int'l Bur. 2004), *erratum*, 21 FCC Rcd 6484 (IB 2006), *petition for recon. pending* ("*Foreign Ownership Guidelines*"). As explained above (*see supra* ¶ 24), Petitioners state that seven (7) investment funds from the Bahamas – a non-WTO Member country – hold an aggregate 0.50% equity interest in Offshore Fund I, which, in turn, holds approximately 84.03% equity interest in the Master Fund. Using the multiplier to calculate equity interests, we find that non-WTO investors will acquire an aggregate 0.42% indirect equity interest in the Master Fund (0.50% x 84.03%) and, in turn, in SkyTerra Communications. We do not use the multiplier to calculate the voting interests attributable to the Bahamian funds because Offshore Fund I holds a majority of the ownership interests (84.03%) in the Master Fund. *See supra* note 70. We thus attribute to non-WTO investors a 0.50% indirect voting interest in the Master Fund (0.50% x 100.00%) and, in turn, in SkyTerra Communications.

¹⁰⁴ *See also infra* Section V (addressing competition issues outside the context of foreign ownership).

¹⁰⁵ *See supra* ¶ 10. SkyTerra is subject to the Executive Branch Agreement, dated November 14, 2001, which is attached to the Commission's decision in *Motient Corporation and Subsidiaries, Transferors, and SkyTerra Communications, Inc., Transferee, Application for Authority to Transfer Control of Mobile Satellite Ventures Subsidiary LLC*, WC Docket No. 06-106, Memorandum Opinion and Order and Declaratory Ruling, DA 06-1872, 21 FCC Rcd 10198 (WTB, OET, Int'l Bur. 2006). *See also 2008 MSV Order*, 23 FCC Rcd at 4440, ¶ 10 n.24.

the 0.42 percent indirect equity interest and 0.50 percent indirect voting interest ascribed in this Memorandum Opinion and Order and Declaratory Ruling to non-WTO Member investment in the Master Fund and, in turn, in SkyTerra Communications (and SkyTerra). SkyTerra may accept up to and including an additional, aggregate 25 percent indirect equity and/or voting interests from the Harbinger Funds' foreign investors that are described in the Petition and from other foreign investors subject to the following conditions. First, this ruling shall not be construed to permit any foreign individual or entity that is not described in the Petition to acquire control of SkyTerra or to acquire an indirect equity or voting interest in SkyTerra that exceeds 25 percent without obtaining additional approval from the Commission.¹⁰⁶ Second, for purposes of calculating the additional, aggregate 25 percent amount, SkyTerra shall include the 0.42 percent equity interest and 0.50 percent voting interest attributed in this Memorandum Opinion and Order and Declaratory Ruling to investors from non-WTO Member countries. We emphasize that SkyTerra has an affirmative duty to monitor its foreign equity and voting interests to ensure compliance with this ruling and to calculate its foreign ownership interests consistent with the Commission's attribution principles.¹⁰⁷

V. PUBLIC INTEREST ANALYSIS

28. In Section A below, we analyze the competitive issues involved with Harbinger's acquisition of SkyTerra, and conclude that, while there might be some anticompetitive harms resulting from the transaction, they are likely to be no more than minor. In Section B, we analyze Harbinger's plans to use SkyTerra's satellite and ancillary terrestrial component authority to offer mobile wireless broadband to the United States and conclude that it represents a significant public benefit, one that is likely to be achieved only if the transaction is approved. In Section C, we balance the potential harms and benefits of the transaction, concluding that the benefits, if realized, will significantly outweigh any potential harms. Because our conclusion that the transaction is in the public interest is dependent on those benefits being achieved, we adopt as conditions Harbinger's commitments to follow its plans. With these conditions, we are assured that the potential public interest benefits of Harbinger's acquisition of control of SkyTerra outweigh any potential harms, and we find that approval of the transaction is in the public interest.

A. Competitive Issues Regarding the Provision of Mobile Satellite Services

29. The application before us seeks authority for Harbinger to acquire control of SkyTerra, an MSS licensee. At the same time, Harbinger has minority interests in other MSS licensees, principally Inmarsat and TerreStar. Although this transaction does not involve a horizontal merger, Harbinger's overlapping interests raise some competitive concerns, both for customers of current mobile satellite services and for potential customers of future services that might use the MSS bands. We begin our

¹⁰⁶ See SkyTerra Narrative, Attachment B at 2 (stating that the applicants do not seek authority that would permit any foreign individual or entity that is not named in the SkyTerra Narrative to acquire control of SkyTerra or to acquire an indirect equity and/or voting interest in SkyTerra that exceeds 25% without obtaining additional approval from the Commission).

¹⁰⁷ Cf. 2008 MSV Order, 23 FCC Rcd at 4443, ¶ 16 (citing *Verizon Communications, Inc., Transferor and America Móvil, S.A. DE C.V., Transferee, Application for Authority to Transfer Control of Telecomunicaciones de Puerto Rico, Inc. (TELPRI)*, WT Docket No. 06-113, Memorandum Opinion and Order and Declaratory Ruling, FCC 07-43, 22 FCC Rcd 6195, 6225, ¶ 68 (2007)). The Petitioners represent that, with minor exception, Harbinger's management has the ability to prevent investors in the Master Fund and Special Situations Fund from selling their interests to third parties if the sales would cause the foreign ownership of SkyTerra to exceed the levels permitted under section 310(b) and any rulings issued thereunder. See August 7, 2009 Supplement, Response to Question 10 (noting that, although HMC Investors, L.L.C. is not controlled by Harbinger's management, it is currently, and is expected to continue to be, owned in relevant part by U.S. citizens; and, in any event, its indirect interests in the Harbinger Funds are being phased out and will be 0.00% as of the end of 2012).

analysis with an overview of the MSS market. We then analyze the competitive issues with regard to current and possible future mobile satellite services. With regard to current services, we note that no customers or actual or potential competitors have raised concerns about the transaction. Moreover, we consider product overlap and note that some MSS providers currently do not offer key services or, like SkyTerra, offer only limited such services.¹⁰⁸ We also consider the lack of customers and we conclude that while it is possible that this transaction might cause some anticompetitive harms in the near term, any such effects would be minor. With regard to future services that might use the MSS bands, assessing any potential harms is difficult and inherently speculative: what services might even be offered is unclear; the providers have not yet deployed any products, much less gained customers; both the business plans of the MSS providers and the identity of their potential products are in flux. We find that, with regard to future mobile satellite services, this is a nascent market that is not yet mature enough to allow us to confidently assess competitive effects. Moreover, changes in the business plans of the MSS companies over the past years (in response to changing economic opportunities and changes in Commission rules) give us further pause in making any predictions.

1. Overview of the MSS Market

30. Some services provided by MSS providers are unique and important,¹⁰⁹ capable, for example, of providing mobile broadband services to thousands of users from individual consumers to government and business customers, *e.g.*, commercial shipping, boating, aeronautical, mining and exploration, emergency, federal, state and local governments, and national defense customers.¹¹⁰ Further, in remote areas or in the case of major disasters such as Hurricane Katrina or the Haitian earthquake, MSS is often the only reliable method of communication available when terrestrial facilities are either non-existent, destroyed or rendered inoperable.¹¹¹

31. As noted above, Harbinger currently has minority interests in three of the six MSS operators. In addition to its interests in SkyTerra, Harbinger owns approximately 29 percent of the voting shares of Inmarsat and some of Inmarsat's convertible debt instruments.¹¹² It also owns 44 percent of the equity and 31 percent of the voting interests in TerreStar, and, if this transaction is approved, would own a total of 49.32 percent of TerreStar Networks, the subsidiary of TerreStar, because of the combination of Harbinger's interests in TerreStar and SkyTerra's 10.6 percent holdings in TerreStar Networks.¹¹³

32. *MSS Bands.* Commercial MSS operators are licensed to provide mobile services in the United States in the following four sets of bands: the L-band,¹¹⁴ the Big LEO (low-earth orbit) Band,¹¹⁵

¹⁰⁸ SkyTerra's next generation satellite is not scheduled for launch and operation until the third or fourth quarter of 2010.

¹⁰⁹ See Letter from the MSS/ATC Coalition to Marlene H. Dortch, Secretary, Federal Communications Commission, at 1, 2 (dated March 5, 2010) (filed in GN Docket Nos. 09-47, 09-51, 09-137) ("MSS/ATC Coalition Letter") (arguing that there are no substitutes for the features and functionality provided by MSS).

¹¹⁰ See MSS/ATC Coalition Letter at 2.

¹¹¹ See MSS/ATC Coalition Letter at 1-2.

¹¹² See SkyTerra Narrative at 6.

¹¹³ TerreStar holds approximately an 88% interest in TerreStar Networks. Post-transaction, Harbinger would own 100% of SkyTerra's equity and, therefore, would own 49.32% = 38.72% (88% x 44%) + 10.6% of TerreStar Networks' equity.

¹¹⁴ 1525-1559 MHz (uplink) and 1626.5-1660.5 MHz (downlink).

¹¹⁵ 1610-1626.5 MHz (uplink), 1613.8-1626.5 MHz (secondary downlink allocation); 2483.5-2500 MHz (downlink).

the 2 GHz or S-Band,¹¹⁶ and the Little LEO Band.¹¹⁷ MSS operators are authorized to provide both voice and data services in the L-band, the Big LEO Band, and the 2 GHz Band, and are authorized to provide only data services in the Little LEO Band.

33. *MSS Providers.* Inmarsat and SkyTerra operate in the L-band. Inmarsat began as an intergovernmental organization in 1979 and was privatized in 1999. Inmarsat has a fleet of 11 geosynchronous satellites which includes four new satellites (I-4), three of which make up the I-4 constellation used for Broadband Global Area Network (BGAN) launched in 2005. One of the three I-4 BGAN satellites serves the United States. Inmarsat provides voice, low-speed data, and high-speed data services to customers for various applications including: (1) land-based applications (*e.g.*, asset tracking); (2) maritime applications (*e.g.*, maritime safety); and (3) aeronautical applications (*e.g.*, flight tracking).¹¹⁸ These services are available throughout most of the world (except at the poles), including the United States and U.S. coastal waters.¹¹⁹ SkyTerra uses two geostationary satellites covering North America¹²⁰ to provide voice and low-speed data services to customers for various applications, including: (1) land-based applications (*e.g.*, voice, asset tracking); (2) maritime applications; and (3) government applications (*e.g.*, disaster relief). These services are available in North and Central America, northern South America, the Caribbean, Hawaii and coastal waters.¹²¹ SkyTerra plans to launch, between August and October 2010, its replacement satellite for MSAT-2, which will be capable of providing “next generation” satellite service, and plans on launching a second satellite (licensed by Canada) to replace MSAT-1 in either the fourth quarter of 2010 or the first quarter of 2011.¹²²

34. Iridium Communications Inc. (“Iridium”) and Globalstar, Inc. (“Globalstar”) operate in the Big LEO Band. Iridium and Globalstar both provide global¹²³ voice and low-speed data services to customers for various applications including: (1) land-based applications (*e.g.*, asset tracking); (2) maritime applications (*e.g.*, vessel monitoring); (3) government applications (*e.g.*, disaster relief); and (4) military applications.¹²⁴ Globalstar has leased spectrum to Open Range Communications (“Open Range”) to allow Open Range to provide wireless broadband to unserved and underserved rural areas.¹²⁵

35. TerreStar and DBSD North America (“DBSD”) (a subsidiary of ICO Global Communications) operate in the 2 GHz Band. TerreStar and DBSD currently do not provide services to the public. Although both operators have launched new satellites with the aim of providing mobile broadband-based services in the near future, their stated plans are to provide different services. TerreStar

¹¹⁶ 2000-2020 MHz (uplink) and 2180-2200 MHz (downlink).

¹¹⁷ 148-150 MHz (uplink) and 137-138 MHz and 400-401 MHz (downlinks).

¹¹⁸ See <http://www.inmarsat.com>.

¹¹⁹ Inmarsat has a fleet of 11 geosynchronous satellites, three of which make up the I-4 BGAN (Broadband Global Area Network) constellation launched in 2005. One of the three I-4 satellites serves the United States.

¹²⁰ These satellites are MSAT-1 (at 106.5° W.L., Canadian licensed) and MSAT-2, (at 101° W.L.).

¹²¹ See <http://www.skyterra.com>.

¹²² See *SkyTerra Communications, Inc., Form 10-Q, Quarterly Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 for the quarterly period ended September 30, 2009* at 5-6.

¹²³ Globalstar offers its services in over 120 countries worldwide. See <http://www.globalstar.com>.

¹²⁴ Iridium also provides its services for aeronautical applications (*e.g.*, flight tracking). See <http://www.iridium.com/index.php>.

¹²⁵ *Globalstar Licensee LLC Applications for Modification of License for Operation of Ancillary Terrestrial Component Facilities*, Order and Authorization, FCC 08-254, 23 FCC Rcd 15975, 15984, ¶ 21 (2008).

expects to offer 4G services to cell-phone sized handsets throughout the United States and Canada.¹²⁶ DBSD expects to offer mobile video services throughout the United States.¹²⁷

36. Orbcomm Inc. (“Orbcomm”) operates in the Little LEO Band. Orbcomm provides narrow-band digital two-way messaging, data communications, and geo-positioning services globally. Orbcomm provides these services through value-added resellers. In particular, through these resellers, Orbcomm provides mobile and fixed site data applications such as asset tracking and weather data services for aviation and maritime vessels.¹²⁸

2. Potential Competitive Effects

a. Market Definitions

37. Consistent with the *DOJ/FTC Horizontal Merger Guidelines*, we begin our analysis of the competitive effects of this transaction by attempting to define the relevant product and geographic markets.¹²⁹ The *DOJ/FTC Guidelines* define the relevant product market as the smallest group of competing products for which a hypothetical monopoly provider of the products would profitably impose at least a “small but significant and non-transitory increase in price,” presuming no change in the terms of sale of other products.¹³⁰ (This procedure is often called the “SSNIP Test” for market definition.¹³¹) Put a different way, when one product is a reasonable substitute for the other in the eyes of a sufficiently large number of consumers, it is included in the relevant product market even though the products themselves are not identical. Thus, the relevant product market includes “all products reasonably interchangeable by consumers for the same purposes.”¹³²

38. We believe that for the purpose of our analysis here, it is useful to examine MSS as they are defined and used in the day-to-day business dealings of the MSS industry. As discussed above,¹³³ MSS

¹²⁶ See <http://www.terrestar.com/about.php>.

¹²⁷ See <http://www.ico.com/about/tech/mim.php>.

¹²⁸ <http://www.orbcomm.com/about/companyInfo.htm>.

¹²⁹ See *XM-Sirius Order*, 23 FCC Rcd at 12367-68.

¹³⁰ See *DOJ/FTC Horizontal Merger Guidelines*, 57 Fed. Reg. 41552, §§ 1.11, 1.12 (Sept. 10, 1992), revised, 4 Trade Reg. Rep. (CCH) ¶ 13104 (Apr. 8, 1997) (*Guidelines*). The *Guidelines* similarly define the relevant geographic market as “a region such that a hypothetical monopolist that was the only present or future producer of the relevant product at locations in that region would profitably impose at least a ‘small but significant and nontransitory’ increase in price, holding constant the terms of sale for all products produced elsewhere.” *Id.* at § 1.21.

¹³¹ One generally starts with a small relevant product market and asks if a hypothetical monopolist could profitably increase price in that market. If the price increase is not profitable because consumers will substitute to another competing product (*i.e.*, if the cross-price elasticity between the products is large), then the SSNIP test is repeated, but the potential product market is expanded to include the next-best substitutes. The procedure continues until a hypothetical monopolist over all the included products can profitably raise prices, identifying that set of products as the relevant product market. *DOJ/FTC Horizontal Merger Guidelines* at § 1.11.

¹³² *United States v. E.I. du Pont de Nemours & Co.* 351 U.S. 377, 395 (1956) (The relevant product market is composed of products that have reasonable interchangeability); see also *United States v. Microsoft*, 253 F.3d 34, 52 (D.C. Cir. 2001), *cert. denied*, 122 S. Ct. 350 (2001) (in determining reasonable substitutes, the court excluded “middleware” software from the definition of the relevant product market because of its present non-interchangeability with Windows notwithstanding its long-term future potential).

¹³³ See *supra* ¶¶ 33-36; see also *Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, Thirteenth Report, DA 09-54, 24 FCC Rcd 6185, 6300-6311, ¶¶ 240-273 (2009).

companies generally provide three types of services – low-speed data, voice, and high-speed data – in each of three different locales, namely on land (also known as land-remote), at sea (maritime), and in the air (aeronautical).¹³⁴ Individual MSS providers may offer other services based on the general categories we have just listed, including emergency marine services (GMDSS).¹³⁵

39. Thus, in our analysis below, and consistent with the definition of a “product market,” we examine low-speed data, voice, and high-speed data services in these three locales. We consider all companies that are capable of offering those products that are considered “reasonably interchangeable” by their users. In this regard, we note that, as the satellite industry has evolved, the line between different satellite technologies has blurred. Services once provided exclusively by mobile satellite operators are now also being provided by fixed satellite services (“FSS”) operators and certain terrestrial wireless operators.¹³⁶

40. As with the rest of the telecommunications sector, technological advances in the mobile satellite industry are shifting the locus of consumer demand and competition to broadband services. Several MSS providers have stated plans to offer high-speed data services, especially in connection with terrestrial networks using their ATC authority. Indeed, Inmarsat is already offering some services with speeds up to 492 kbps, depending on the application.¹³⁷ We therefore separately analyze MSS in the current and possible future broadband MSS.

b. Current Mobile Satellite Services

41. We begin our analysis with an examination of the small number of existing and likely future mobile satellite operators. We also note that FSS¹³⁸ and certain other terrestrial wireless technologies¹³⁹

¹³⁴ Because our analysis focuses on the interplay of Harbinger’s financial interests in SkyTerra, Inmarsat, and TerreStar on competition for mobile satellite services, our examination is necessarily limited to those locales where SkyTerra, Inmarsat, and TerreStar have overlapping “footprints” (satellite service coverage). While Inmarsat’s satellite footprint is near-global, SkyTerra’s and TerreStar’s footprints are limited to North America, therefore potential harms are limited to customers demanding service coverage only in North America as all or part of their communications needs.

¹³⁵ See, e.g., <http://www.inmarsat.com/>. The Global Maritime Distress Safety System (GMDSS) is an international communications system that uses terrestrial and satellite technology developed to increase safety and facilitate the rescue of distressed ships, boats and aircraft. See http://www.imo.org/Safety/index.asp?topic_id=390.

¹³⁶ Recent innovations reducing the size and increasing the pointing accuracy of satellite antennas in the C- and Ku-bands have allowed their use in mobile applications. See, e.g., *Procedures to Govern the Use of Satellite Earth Stations on Board Vessels in the 5925-6425 MHz/3700-4200 MHz Bands and 14.0-14.5 GHz/11.7-12.2 GHz Bands*, IB Docket No. 02-10, Report and Order, FCC 04-286, 20 FCC Rcd 674 (2005), *Order on Reconsideration*, FCC 09-63, 24 FCC Rcd 10369 (2009) (*further recon. pending*) (establishing licensing and service rules for Earth Stations on Vessels (ESVs) operating in the C- and Ku-band frequencies, and noting that ESVs have been utilized for several years to provide telecommunications services, including Internet access, to cruises, merchant ships, ferries, barges, yachts and U.S. navy vessels); *Amendment of Parts 2 and 25 of the Commission’s Rules to Allocate Spectrum and Adopt Service Rules and Procedures to Govern the Use of Vehicle-Mounted Earth Stations in Certain Frequency Bands Allocated to the Fixed-Satellite Service*, IB Docket No. 07-101, Report and Order, FCC 09-64, 24 FCC Rcd 10414 (2009) (*recon. pending*) (establishing licensing and service rules for the use of vehicle-mounted earth stations as an application of the fixed satellite service in the conventional and extended Ku-band frequencies). Aircell is using terrestrial stations to provide aeronautical broadband services in competition with Inmarsat and other MSS operators. See <http://www.aircell.com/>.

¹³⁷ See <http://www.inmarsat.com/Services/Land/BGAN/default.aspx?language=EN&textonly=False>.

¹³⁸ Some FSS providers currently provide competition for some services in North America (e.g., land and aeronautical services, and coastal maritime services). FSS providers typically require more cumbersome receiving antennas but also can, in certain cases, provide higher data rates at lower prices.

provide some competition to MSS providers. We recognize that Harbinger's proposed purchase of SkyTerra in combination with its non-controlling financial interests in other MSS operators raises some competitive concerns. For example, with its combined interests, Harbinger might seek to raise prices above an otherwise competitive level. Whether Harbinger could actually profitably follow such a strategy, however, depends on a number of factors, including the level of customer demand, the degree to which the companies in which Harbinger has an interest are, or could be, substitute providers for a particular mobile satellite service, and whether there are, or could be, other competitors in which Harbinger has no financial interest.

42. Inmarsat is the leading MSS provider, with 11 geostationary satellites and near-global coverage.¹⁴⁰ Inmarsat provides low-speed data and voice services and is currently the only MSS provider of high-speed data services over North America. One of its satellites provides coverage to North America that is capable of providing data services up to 492 kbps in association with laptop-sized customer equipment.¹⁴¹ Inmarsat's 2007 wholesale service revenues were \$547 million (56%) of wholesale revenues of \$985 million for the total MSS industry.¹⁴² Inmarsat also provides the full array of mobile satellite services described above, as well as critical emergency and public safety services.

43. SkyTerra competes with Inmarsat in North America in the provision of domestic low-speed mobile satellite data services and voice-grade mobile satellite services.¹⁴³ Other companies also provide low-speed mobile satellite data services and/or voice-grade mobile satellite services in North America, including Orbcomm, Globalstar, Iridium, and some FSS providers.¹⁴⁴ As noted above, TerreStar does not currently offer services to the public. With regard to land voice services, according to one industry source, both Inmarsat and SkyTerra provide only limited services compared to Iridium and Globalstar.¹⁴⁵ With regard to land low-speed data services, according to the same source, SkyTerra is a major provider, along with Orbcomm, while Inmarsat is less so.¹⁴⁶ Inmarsat appears to be the leader with regard to sea and air voice and low-speed data services. Based on these multiple providers and limited overlap of the service offerings of the companies in which Harbinger has an interest, we conclude that Harbinger's acquisition of control of SkyTerra would be unlikely to have anticompetitive effects on current mobile

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¹³⁹ See, e.g., Aircell's terrestrial radio for aeronautical services.

¹⁴⁰ See Inmarsat Holdings Limited, Consolidated Financial Results for the three and nine months ended 30 September 2009 (unaudited) at 1.

¹⁴¹ See Comments of Inmarsat PLC, Report to Congress Regarding the ORBIT Act, IB Docket No. 09-48, April 29, 2009 at 2. See also http://www.inmarsat.com/About/Our_satellites/default.aspx?language=EN&textonly=False.

¹⁴² The estimate of total industry revenue is for the world-wide operations of the major mobile satellite operators: Inmarsat, Iridium, Globalstar, Thuraya, SkyTerra, and Orbcomm. See Tim Farrar, *The Mobile Satellite Services Business: Competitive Structure, Size, Segments, and the Unique Role of Inmarsat in Certain Segments (Farrar Report)* at 16, filed as Attachment A to Reply of Vizada Inc. and Vizada Services LLC to Oppositions of Inmarsat plc and Stratos Global Corporation, Sept. 10, 2008, in IB Docket No. 08-143 (cited in *Inmarsat-Stratos Order*, n. 25.)

¹⁴³ See <http://www.skyterra.com/products/index.cfm>.

¹⁴⁴ FSS providers use frequencies in the C, Ku, and Ka bands. Some of the competitive services offered by FSS providers include land and aeronautical services and coastal maritime services. In addition, some terrestrial wireless providers offer asset-tracking services, although these services cannot serve customers who require coverage in the remote locations served by satellite operators.

¹⁴⁵ See *Farrar Report* at 16.

¹⁴⁶ Although there is limited information available regarding the size of Inmarsat's North American land low-speed data mobile satellite operation, it appears to be less than Orbcomm's and SkyTerra's. See *Farrar Report* at 16.

satellite services. In this regard, we also again note that no commenters, either customers or rival providers, have opposed this transaction.

c. Future Mobile Satellite Services

44. Assessing the extent of potential competitive harms in the provision of future mobile satellite services is difficult, because the mobile satellite service industry is undergoing major technological and structural changes. TerreStar and DBSD have recently launched technologically advanced satellites capable of providing broadband service, although commercial services are not yet available. SkyTerra has made substantial progress in building two technologically advanced broadband mobile satellites, but is not expected to begin launching them until later this year. In addition, FSS and terrestrial wireless providers are developing technologies that enable them to offer services that compete more fully with mobile satellite services. There is considerable uncertainty about what new products all of these firms will roll out and what customer segments they could profitably serve. We conclude that these markets are not yet mature enough to allow us to fully determine the competitive effects, if any, of this transaction. However, we briefly describe the currently stated plans of several of the providers below.

45. *Inmarsat*. As discussed above, Inmarsat is currently the only MSS provider of high-speed data service in North America. Inmarsat's services generally require portable, laptop-sized customer equipment and antennas. Inmarsat faces limited competition from FSS providers, which are able to supply services similar to mobile satellite services due to improving antenna pointing capabilities and other technological improvements.¹⁴⁷

46. *SkyTerra*. SkyTerra plans to launch its two "next-generation" replacement satellites in the 2010-11 time-frame and to make service commercially available soon thereafter.¹⁴⁸ The new satellites are designed¹⁴⁹ to be capable of providing high-speed broadband services to small customer handsets approximately the size of cell phones. SkyTerra may offer mass market broadband service by combining its satellite coverage with a terrestrial network,¹⁵⁰ although it is unclear whether SkyTerra would be able to construct a terrestrial network to the degree proposed absent approval of this transaction. SkyTerra's planned system is designed to operate with small customer handsets and support higher data speeds than Inmarsat's current system.

47. *TerreStar*. TerreStar has recently launched a technologically advanced mobile satellite capable of providing high-speed broadband service to small handsets, although commercial services are not yet available. At the time of launch, TerreStar's satellite was described as "the largest-ever commercially launched satellite" and will serve the United States and Canada. Although TerreStar has a marketing agreement with AT&T to offer mobile service, its business plans appear to be fluid.¹⁵¹

48. *DBSD*. DBSD also recently launched an advanced mobile satellite. Its most recent

¹⁴⁷ See *Inmarsat-Stratos Merger Order*, 24 FCC Rcd at 463, ¶ 37.

¹⁴⁸ Because of substantial sunk costs in designing and building the satellites and the value of ATC dependent on them, it is likely that the satellites will be launched and made commercially available.

¹⁴⁹ SkyTerra's satellites are designed to have 22-meter antennas, the largest of any current or planned next-generation mobile satellite.

¹⁵⁰ See <http://www.skyterra.com/products/future-products.cfm>. See also *SkyTerra Communications, Inc., Form 10-Q, Quarterly Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 for the quarterly period ended September 30, 2009* at 25-26.

¹⁵¹ See *TerreStar Announces Distribution Agreement with AT&T* (dated September 30, 2009), available at <http://www.terrestar.com/pressreleases.php>.

business plans are to provide primarily a mobile interactive media service rather than telecommunications services. While DBSD has ATC authority and DBSD's system could also be used for providing broadband telecommunications services using small customer handsets, it does not plan to offer such services, at least as its primary offering. Further, DBSD's satellite antenna is not as large as SkyTerra's or TerreStar's, and this might affect its ability to offer service using small handsets.¹⁵² We also note that DBSD is still emerging from bankruptcy protection (although its parent, ICO Global, is not in bankruptcy), thus leaving its business plans more fluid than they might otherwise be.

49. *Other Providers.* It is unclear as to whether Iridium or Globalstar have any plans to offer mobile high-speed data services in the future.¹⁵³ Again, though, Globalstar has a spectrum lease agreement that allows Open Range to use Globalstar's ATC network to provide wireless broadband service to unserved and underserved rural areas. It therefore may be able to provide broadband land-based service. As discussed above, Orbcomm is restricted to providing low-speed data services. Finally, FSS and terrestrial wireless providers are developing technologies that may enable them to compete with broadband mobile satellite services.¹⁵⁴

50. *Traditional Mobile Satellite Services.* As stated above, SkyTerra will soon be launching two replacement satellites that will be capable of offering both SkyTerra's current services and broadband services to customers requiring only domestic mobile satellite services, in competition with Inmarsat. TerreStar, although not yet offering service to the public, has already launched and is currently testing a high capacity satellite capable of providing broadband service to North America¹⁵⁵ that could provide additional competition to Inmarsat and SkyTerra for customers wanting only domestic mobile satellite services.

51. Based on the developments described above, in the near term, we anticipate additional competition among Inmarsat and SkyTerra and/or TerreStar to provide all types of mobile satellite services. While currently only Inmarsat offers satellite-based mobile high-speed data service to customers requiring ubiquitous North American coverage, in the near term the satellite launches by SkyTerra and TerreStar will allow these providers to offer services that compete directly with services offered by Inmarsat. The extent to which providers other than Inmarsat, TerreStar and SkyTerra will provide competition in the near term is unclear. While DBSD recently launched an advanced mobile satellite, it plans primarily to provide media services rather than telecommunications services.¹⁵⁶ DBSD's system might, however, be capable of providing broadband telecommunications services in competition with those currently offered by Inmarsat. We do not expect Iridium or Globalstar to offer high-speed

¹⁵² DBSD's satellite antenna is 12 meters, compared to TerreStar's satellite antenna of 18 meters and SkyTerra's planned satellite antenna of 22 meters. With a smaller satellite antenna, larger customer equipment may be required.

¹⁵³ Iridium currently provides voice and broadband service (at relatively low speeds) with minimal latency over large handsets; Globalstar currently provides low-speed data and some voice connectivity with minimal latency over large handsets. In addition, Iridium has stated its plans to launch the Iridium NEXT constellation by 2014, but it is unclear as to whether those satellites will allow Iridium to provide high-speed broadband services. See *Iridium Quarterly Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 for period ended September 30, 2009*, available at <http://investor.iridium.com/secfiling.cfm?filingID=1193125-09-235819>.

¹⁵⁴ See *supra* note 136.

¹⁵⁵ See *supra* ¶ 35.

¹⁵⁶ DBSD launched its first mobile satellite, ICO G1, on April 14, 2008 for a primary product of Mobile Interactive Media.

services in the near future.¹⁵⁷ Orbcomm is restricted to providing low-speed data services.¹⁵⁸ In addition, FSS providers are currently able to offer mobile broadband services due to improving antenna pointing capabilities and other technological improvements.¹⁵⁹ However, the effectiveness of FSS providers could be limited by the larger size and higher cost of customer equipment, and competition appears to be primarily for large volume users.¹⁶⁰

52. The competition we anticipate may potentially be weakened, however, if Harbinger acquires control of SkyTerra with our approval of this transaction. Harbinger, for instance, may have less of an incentive than an independent SkyTerra would have to compete with Inmarsat and TerreStar.¹⁶¹ Further, if SkyTerra were to compete less aggressively, Inmarsat and TerreStar might take similar action, as a result of either tacit or overt collusion.¹⁶² Tempering such concerns, however, are the existence of some competition for Inmarsat's services today (from FSS providers, for example) and the potential for more competition in the near future. Such competition would diminish the profitability of any of these actions, were Harbinger to take them. Further, even assuming there were some diminution of competition involving SkyTerra, any harm would be limited to a narrow field (domestic mobile satellite services).

53. *Mass Market Services.* On the basis of the companies' current plans, it would appear that SkyTerra and TerreStar could become each other's closest competitors, each offering mobile broadband services to consumers using small, cell-phone size handsets. Were we to conclude that the future product market would likely be this narrow, we might therefore be concerned about allowing Harbinger, which owns a non-controlling interest in TerreStar, to acquire control of SkyTerra. But given our present uncertainty about future customer demand in this emerging area and the fact that, as the next section makes clear, Harbinger intends to provide enhanced competition to major terrestrial broadband providers via its wholesale service, we find it doubtful that this transaction would cause any competitive harm for potential users of next generation mobile satellite services.¹⁶³

54. More generally, it would be premature to evaluate the effect of this transaction on "next-generation" mobile satellite services. Next generation services have not yet been commercially launched, and no customers yet exist. Indeed, the MSS companies' business plans, and the very nature of the service offerings, are fluid. The fact that companies have changed their plans over the past years, both in response to changing economic times and to changes in Commission rules, weighs against making any

¹⁵⁷ We note, as stated above, that Globalstar has a spectrum lease agreement that allows Open Range to use Globalstar's spectrum to provide wireless fixed broadband service to unserved and underserved rural areas; however, it has no plans of which we are aware to offer mobile satellite-based broadband services.

¹⁵⁸ See 47 CFR § 2.106 US320.

¹⁵⁹ For a description of competition to Inmarsat from FSS providers, see *Robert M. Franklin, Trustee, Inmarsat, plc, Consolidated Application for Consent to Transfer of Control of Stratos Global Corporation from an Irrevocable Trust to Inmarsat, plc*, IB Docket No. 08-143, Memorandum Opinion and Declaratory Ruling, DA 09-117, 24 FCC Rcd 449, 463-464, ¶¶ 37-38 (Int'l Bur. 2009) (*Inmarsat-Stratos Merger Order*).

¹⁶⁰ See *Inmarsat-Stratos Merger Order*, 24 FCC Rcd at 463-464, ¶¶ 37-38.

¹⁶¹ Such behavior might entail unilateral or coordinated conduct. Unilateral conduct is non-coordinated conduct, *i.e.*, conduct the success of which does not rely on the concurrence of other firms in the market or on coordinated responses by those firms. *DOJ/FTC Merger Guidelines* §0.1.

¹⁶² See *Liberty Media – DirecTV Order*, 23 FCC Rcd at 3290-3294, ¶¶ 55-59 and n.184 (discussing influence of a significant shareholder and company's refusal to take competitive actions that might be against the shareholder's interests).

¹⁶³ We analyzed the possible loss of competition for mobile broadband service to typical MSS customers above.

predictions about any potential harms that might arise from this transaction. Accordingly, it would be speculative as to whether any competitive harm would occur and, if there were harm, the extent of its magnitude.

B. Potential Public Interest Benefits in the Provision of Mobile Broadband Services

55. Harbinger plans to construct an integrated satellite/terrestrial “fourth-generation” (“4G”) mobile broadband network¹⁶⁴ that primarily uses SkyTerra’s ATC authority and SkyTerra’s new next generation satellites – SkyTerra-1 and SkyTerra-2 – the first of which is expected to be launched between August and October 2010.¹⁶⁵ These satellites will be more powerful than those currently in use, enabling the use of small handsets that are very similar to the terrestrial handsets in terms of cost and appearance.¹⁶⁶ Harbinger’s broadband network will provide voice and data mobile wireless services nationwide, including to rural areas that lack service from existing terrestrial wireless providers.¹⁶⁷ Harbinger plans to utilize its integrated satellite/terrestrial broadband network to provide services on a wholesale basis to retail distribution customers such as mobile service providers, and other retailer distribution customers such as PC, mobile handset, and consumer electronic equipment manufacturers. The retail distribution customers, in turn, will be able to design a variety of services.¹⁶⁸ Harbinger asserts that this network “will enhance competition in the terrestrial broadband industry and help meet increasing consumer demands for high-capacity wireless mobility.”¹⁶⁹

56. Harbinger’s network will cover 100 percent of the U.S. population via the satellite component and ultimately over 90 percent of the population via its terrestrial component.¹⁷⁰ Service will begin in two trial markets with a commercial launch commencing before the third quarter of 2011, providing service for up to 9 million POPs.¹⁷¹ Excluding satellite coverage, Harbinger has committed to a build-out schedule of its 4G terrestrial network that will provide coverage in the United States to at least 100 million people by December 31, 2012, at least 145 million people by December 31, 2013, and at least 260 million people by December 31, 2015.¹⁷²

57. *Analysis.* Mobile broadband services are poised to be a primary driver of innovation in the U.S. economy over the next decade. Mobile broadband exists at the intersection of two

¹⁶⁴ By 4G, we mean a network that provides speeds to end users throughout the coverage area at least a level commensurate with deployments of terrestrial networks using “4G” technologies, such as the 3GPP Long Term Evolution (LTE) or Worldwide Interoperability for Microwave Access (“WiMAX”) standards.

¹⁶⁵ See Harbinger December 11, 2009 Response at 15.

¹⁶⁶ See EXECUTIVE SPOTLIGHT ON: Drew Caplan, SatMagazine, March 2009 edition, available at http://www.satmagazine.com/cgi-bin/display_article.cgi?number=1840318531&method=print#. See also SkyTerra Unveils Transition Plans for Customers onto Its Next-Generation Network, dated June 16, 2009, available at <http://www.skyterra.com/media/press-releases-view.cfm?id=211>. See also Letter from Gary Epstein, Executive Vice President, Law & Regulation, and Jeffrey Carlisle, Vice President, Regulatory Affairs for SkyTerra Subsidiary LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, at 48 (dated December 2, 2009) (“SkyTerra December 2 Response”).

¹⁶⁷ Harbinger Business Plan Letter, Attachment 1 at 2; see also Harbinger December 11, 2009 Response at 14.

¹⁶⁸ Harbinger Business Plan Letter, Attachment 1 at 2.

¹⁶⁹ Harbinger Business Plan Letter, Attachment 1 at 2.

¹⁷⁰ Harbinger Business Plan Letter, Attachment 1 at 2.

¹⁷¹ See Harbinger Business Plan Letter, Attachment 1 at 2.

¹⁷² Harbinger Business Plan Letter, Attachment 2 at 1.

communications trends that have driven innovation and economic growth in the United States over the past two decades: (1) the widespread adoption of mobile voice technology and (2) the increased deployment of fixed broadband services. Ubiquitous high-speed mobile connectivity is spawning new industries and allowing existing industries to become more productive. These services and others yet to be developed will enable entrepreneurs, consumers, non-profit organizations, and government to interact and build better businesses and stronger communities. If deployed as planned, Harbinger's integrated satellite/terrestrial 4G mobile wholesale broadband network will form another platform for innovation and growth of the U.S. economy.

58. The U.S. mobile broadband market is primed to grow significantly over the next few years as a result of private sector innovation and investment. According to Cisco, North American wireless networks carried approximately 17 petabytes per month in 2009,¹⁷³ an amount equivalent to 1,700 Libraries of Congress. Cisco projects that by 2013 wireless networks in North America will carry nearly 400 petabytes per month, an over twenty-fold increase. Other industry analysts forecast similar proportional increases in the amount of data transmitted relative to the current day.

59. Driving the market's growth are maturing 3G network services, the evolution of smartphones and other mobile computing devices, and the rollout of 4G technologies such as LTE and WiMAX. If constructed as planned, Harbinger's terrestrial network would be capable, throughout its coverage area, of deploying LTE and WiMAX level service. As discussed above, using its terrestrial network, Harbinger proposes to provide service to at least 100 million people in the United States by the end of 2012 with an increase to at least 260 million people in the United States by the end of 2015. The 4G mobile voice and data services available through Harbinger's broadband network would enable it to provide a service that complements and enhances competition in the provision of terrestrial wireless services provided by terrestrial carriers such as AT&T, Verizon Wireless, Sprint, T-Mobile, Clearwire, and others, particularly in the area of mobile broadband services. Nationwide terrestrial providers are only just beginning to roll out their 4G networks.¹⁷⁴

60. At present, large portions of the country are served by three or fewer providers of mobile broadband service.¹⁷⁵ If Harbinger successfully deploys its integrated satellite/terrestrial 4G mobile broadband network, it will also be able to provide mobile communications in areas where it is difficult or impossible to provide coverage by terrestrial base stations, such as in remote or rural areas and non-coastal maritime regions, and at times when coverage may be unavailable from terrestrial-based networks, such as during hurricanes and other natural disasters.¹⁷⁶ Harbinger's more powerful satellites would enable the use of small handsets that are very similar to terrestrial handsets in terms of cost and

¹⁷³ CISCO SYSTEMS, INC., CISCO VISUAL NETWORKING INDEX: FORECAST AND METHODOLOGY, 2008-2013 (2009) AT 12.

¹⁷⁴ While there are multiple providers of mobile voice services, only two nationwide providers – Sprint (through its affiliation with Clearwire) and Verizon Wireless – have begun or announced plans to roll out 4G service in various markets by the end of this year.

¹⁷⁵ See High-Speed Services for Internet Access, Status as of December 31, 2008, Industry Analysis and Technology Division, Wireline Competition Bureau, February 2010 at 32.

¹⁷⁶ As noted in the aftermath of Hurricane Katrina, for example, “[s]atellite networks appeared to be the communications service least disrupted by Hurricane Katrina. As these networks do not heavily depend on terrestrial-based infrastructure, they are typically not affected by wind, rain, flooding or power outages.” Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks, Report and Recommendations to the Federal Communications Commission, June 12, 2006. See also *supra* ¶ 30.

appearance.¹⁷⁷

61. Looking forward, commercial and technological developments suggest that the potential exists for market-changing deployment of broadband networks and mass market consumer devices that include satellite-enabled broadband coverage. If Harbinger successfully deploys its terrestrial network, Harbinger could have a beneficial impact on competition not only through its role as an additional facilities-based provider of mobile broadband service. For example, it could be a wholesale provider of these services for mobile resellers (Mobile Virtual Network Operators (MVNOs)), smart grid networks, and potentially for mass market consumer devices, such as the Kindle.

62. We find that Harbinger's proposal to construct an integrated satellite/terrestrial 4G mobile broadband network, if realized, promises the possibility of providing several public interest benefits. Its network will provide additional broadband capacity at a time when – as the National Broadband Plan noted – the nation is increasing its use of such services exponentially. It will help enhance competition among current mobile wireless providers. Through Harbinger's role as a wholesale provider, it may be a catalyst for market-changing developments in the use and sale of innovative new mass-market consumer devices. It will provide mobile wireless broadband service to those areas that are currently unable to receive it. And it will provide wireless broadband service during those times, such as natural disasters, when it would otherwise be unavailable.

C. Balancing of the Public Interest Considerations

63. In this section, we balance the potential public interest harms of the transaction against the potential public interest benefits to determine whether, overall, approval of the transaction is in the public interest. For the reasons set forth below, we find that the potential public interest benefits – arising from the wholesale provision of facilities-based 4G broadband services that cover much of the U.S. population – significantly outweigh any potential harms as previously noted. We impose conditions to ensure that the significant benefits promised by the transaction are achieved.

64. As discussed in the previous section, Harbinger would have a controlling interest in SkyTerra and non-controlling interests in two other MSS providers. On its face, therefore, this transaction poses at least theoretical competitive concerns. Harbinger's interests in other MSS providers could influence the competitive decisions it makes for SkyTerra. Harbinger might be able to profit by directing SkyTerra to compete less aggressively, or not at all, against TerreStar and Inmarsat in order to maximize the profitability of its combined mobile satellite investments. Also, with control of SkyTerra, Harbinger could more easily coordinate its actions with other MSS providers or more easily share information among those in which it has an interest.

65. While these potential competitive harms are theoretically possible, we have several reasons to believe that they are uncertain and, if they did occur, would not likely be significant. We examined a variety of mobile satellite services: those that are provided today and next-generation services. With regard to today's services, SkyTerra currently provides only limited competition to Inmarsat, and TerreStar does not yet offer service to the public. Further, both SkyTerra and Inmarsat face competition from other MSS providers. We thus find that anticompetitive harms are unlikely.

66. In the future, with SkyTerra's and TerreStar's new satellites, we expect that there will be competition for all types of MSS, especially broadband, among SkyTerra, TerreStar and Inmarsat. That competition possibly could be weakened if Harbinger acquires control of SkyTerra. However, tempering that possibility is the fact that there will remain some competition from the other MSS providers and, with regard to satellite broadband services, from FSS providers. On the other hand, we consider MSS to be

¹⁷⁷ See Comments of SkyTerra Subsidiary LLC at 2 (filed in GN Docket Nos. 09-47, 09-51, 09-137) (dated Nov. 12, 2009).

important and thus are concerned about any loss of competition in this industry even though predicting the future, especially in the MSS industry, is difficult. For the reasons discussed in the previous section, we find Harbinger's acquisition of SkyTerra does pose some risk of anticompetitive harm for users of MSS in the near future, although we conclude that the harm is unlikely to be significant.

67. With regard to mobile satellite broadband services that might be available in the future, SkyTerra has plans to, but does not yet, offer such services. Other MSS providers have similar plans, including two (TerreStar and DBSD) that have already launched satellites. FSS providers are already commercially successfully in providing some broadband services to traditional MSS customers. Both the business plans of the MSS providers and the potential products are fluid. In short, this is a nascent market that is not yet mature enough to allow us to assess confidently the competitive effects of this transaction.

68. In acquiring control of SkyTerra, Harbinger is proposing to deploy an additional, nationwide facilities-based mobile broadband network. Using SkyTerra's ancillary terrestrial component authority, Harbinger plans on building a terrestrial network that will eventually be able to provide service at 4G speeds to over 90 percent of the U.S. population. Service from SkyTerra's new satellite will be able to provide broadband service to the United States, including those rural areas that have little or no broadband service available today. Harbinger expects that SkyTerra's service will enhance competition in the provision of terrestrial mobile broadband services, including those provided by AT&T and Verizon Wireless.¹⁷⁸

69. Harbinger's proposed integrated satellite/terrestrial 4G mobile broadband network would make use of additional flexibility for the technical design of the ATC network. Thus, the Skyterra network will operate with greater capacity and improved efficiency compared to its legacy network.

70. We find that Harbinger's plans to provide 4G mobile wireless broadband are a significant public interest benefit, both because of the competition it will bring in mobile wireless broadband services and because it will provide mobile wireless broadband service to traditionally underserved areas. We further find that SkyTerra is highly unlikely to provide this service if Harbinger does not acquire it. Although SkyTerra already has plans to launch its next generation satellite, it does not have plans to build out a terrestrial network to the significant extent that Harbinger is planning. Nor is it apparent that it could obtain the resources to do so. We therefore conclude that the potential public benefits are dependent on Harbinger's acquisition of SkyTerra.

71. Weighing the potential public interest harms of the transaction against the potential public interest benefits, we conclude that approval of the transaction is in the public interest. Our conclusion, however, is dependent on Harbinger's actually moving forward with its plan to use SkyTerra to provide 4G mobile wireless service, and especially on Harbinger's plan to build a terrestrial network using SkyTerra's ATC authority to facilitate broadband service to most of the U.S. population. In reaching our conclusion, we are assuming that the benefits set forth by Harbinger will occur as described. Much of the potential benefits arise from the added competition to the incumbent terrestrial mobile wireless broadband providers.

72. If realized, Harbinger's plans to offer 4G wireless broadband services will achieve substantial public benefits, relating to the build out and deployment of a new facilities-based broadband player that will serve more than 80 percent of the U.S. population by the end of 2015. In a letter dated March 26, 2010, Harbinger made a number of commitments to the Commission and, by extension, to the

¹⁷⁸ At the same time, we note that Harbinger's proposal will not diminish SkyTerra's MSS coverage and may even increase it in certain areas. SkyTerra's MSS capacity also will be increased significantly by virtue of its next generation satellite to be launched this year.

public, that give us greater confidence that the promised benefits will occur.¹⁷⁹ Because our conclusion that Harbinger's acquisition of SkyTerra is in the public interest is dependent on those benefits being achieved, we are adopting Harbinger's commitments, in Attachment 2 of its March 26, 2010 letter, as conditions to our approval. The first condition requires that if the Applicants seek to make spectrum available to either of the two largest terrestrial providers of CMRS and broadband services, they must obtain Commission approval. The second condition requires the Applicants to build a terrestrial network using Skyterra's ATC authorizations. The third condition requires the Applicants to obtain Commission approval before traffic to these largest terrestrial providers accounts for more than 25 percent of SkyTerra's total traffic on its terrestrial network in any Economic Area. The conditions are set forth in full in Appendix B. The conditions do not limit the Commission's authority to review future spectrum transactions proposed by Harbinger.¹⁸⁰

73. With these conditions, we are assured that the potential public interest benefits of Harbinger's acquisition of SkyTerra outweigh any potential harms, and we are able to find that approval of the transaction is in the public interest.

VI. CONCLUSION

74. Upon review of the Transfer of Control Application and the record in this proceeding, we conclude that approval of this transaction, subject to the conditions set forth herein, is in the public interest. There is no evidence in the record to suggest that Harbinger lacks the basic qualifications to be the transferee of the licenses and authorizations currently held by SkyTerra or that the proposed transaction would harm competition or otherwise contravene any Commission rule or policy.

VII. ORDERING CLAUSES

75. Accordingly, having reviewed the Transfer of Control Application and the record in this matter, IT IS ORDERED that, pursuant to sections 4(i) and (j), 214, 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 214, 309, 310(d), the Transfer of Control Application for consent to transfer control of the licenses and authorizations of SkyTerra Subsidiary, LLC from SkyTerra Communications, Inc. to Harbinger Capital Partners Funds is GRANTED, to the extent specified and as conditioned in this Memorandum Opinion and Order and Declaratory Ruling.

76. IT IS FURTHER ORDERED, pursuant to sections 4(i) and (j), and 310(b) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 310(b), and section 1.2 of the Commission's rules, 47 C.F.R. § 1.2, that the Petition for Declaratory Ruling filed by the Applicants is GRANTED to the extent set forth herein.

77. IT IS FURTHER ORDERED that the above grant shall include authority for Harbinger to acquire control of any license or authorization issued to SkyTerra Subsidiary, LLC or its affiliates and/or subsidiaries during the Commission's consideration of the Application or the period required for consummation of the transaction following approval and issuance of this Memorandum Opinion and Order and Declaratory Ruling.

¹⁷⁹ See generally Harbinger Business Plan Letter.

¹⁸⁰ For instance, should Harbinger seek to combine its spectrum holdings with spectrum used by a terrestrial wireless licensee for the provision of CMRS or mobile broadband services, the Commission may examine the proposed transaction for potential competitive harm, as is standard practice with terrestrial mobile wireless transactions involving spectrum aggregation. See 47 U.S.C. § 310(d).

78. IT IS FURTHER ORDERED that this Memorandum Opinion and Order and Declaratory Ruling SHALL BE EFFECTIVE upon release. Petitions for reconsideration under section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, may be filed within thirty days of the date of public notice of this order.

Federal Communications Commission

Mindel De La Torre
Chief, International Bureau

Julius Knapp
Chief, Office of Engineering and Technology

Ruth Milkman
Chief, Wireless Telecommunications Bureau

APPENDIX A
Licenses and Authorizations

I. INTERNATIONAL SECTION 214 AUTHORIZATIONS

<u>File No.</u>	<u>Authorization Holder</u>	<u>Authorization Numbers</u>
ITC-T/C-20080822-00397	SkyTerra Subsidiary, LLC	ITC-214-19951215-00023 ITC-214-19950314-00022

II. DOMESTIC AUTHORIZATIONS

<u>Docket Numbers:</u>	<u>Authorization Holder:</u>
See IB Docket No. 08-184	SkyTerra Subsidiary, LLC

III. SECTION 310(D) APPLICATIONS

A. Fixed Earth Station Authorizations:

<u>File No.</u>	<u>Licensee</u>	<u>Call Signs</u>
SES-T/C 20080822-01089	SkyTerra Subsidiary, LLC	E940374 E930124

B. Mobile Earth Station Authorizations:

<u>File No.</u>	<u>Licensee</u>	<u>Call Signs</u>
SES-T/C-20080822-01088	SkyTerra Subsidiary, LLC	E990133 E980179 E930367

C. Space Station Authorizations:

<u>File No.</u>	<u>Licensee</u>	<u>Call Signs</u>
SAT-T/C-20080822-00157	SkyTerra Subsidiary, LLC	AMSC-1 (includes ATC authority) S2358

IV. PART 90-WIRELESS LICENSE

<u>File No.</u>	<u>Licensee</u>	<u>Call Sign</u>
0003540644	SkyTerra Subsidiary, LLC	WQHL596

V. PART 5-EXPERIMENTAL LICENSES

<u>File No.</u>	<u>Licensee</u>	<u>Call Signs</u>
0021-EX-TU-2008	SkyTerra Subsidiary, LLC	WC9XRS XD WE2XIF XD WE2XJW XD WD2XNL XD WE2XOD XD WE2XOW XD WE2XPD XD

APPENDIX B

Harbinger Business Plan Letter of March 26, 2010

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March 26, 2010

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

**Re: IB Docket No. 08-184, FCC File Nos.: ITC-T/C-200080822-00397,
SAT-T/C-20080822-00157, SES-T/C20080822, SES-T/C-20080822-
01088, 0003540644, 0021-EX-TU-2008 (the "Transfer of Control
Applications")**

Dear Ms. Dortch:

On February 26, 2010, Harbinger Capital Partners Funds ("Harbinger") filed on a confidential basis information concerning the above-referenced Transfer of Control Applications. Harbinger hereby files for inclusion in the public record information concerning the February 26 filing.

The first attachment to this letter summarizes the business model Harbinger expects to follow once the transaction outlined in the Transfer of Control Applications has been consummated. The second attachment to this letter outlines conditions Harbinger commits to abiding by if the Transfer of Control Applications and a pending application filed by SkyTerra to modify its ATC authority are granted.¹ Harbinger's commitments are contingent upon a grant of the applications filed by SkyTerra for

¹ As stated in the attachment, the commitments would be binding on Harbinger, SkyTerra (once controlled by Harbinger), their successors and assigns, and affiliates of SkyTerra (*i.e.*, entities directly or indirectly controlling SkyTerra, controlled by SkyTerra, or under common control with SkyTerra).

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modification of its ATC authority (the "ATC Modification Applications") being granted prior to or concurrently with the grant of the Transfer of Control Applications. The commitments will not be effective unless and until the FCC has granted the requests made by SkyTerra in the ATC Modification Applications, as requested by SkyTerra, without requiring changes that are material and adverse to Harbinger.

Please direct any questions concerning this filing to the undersigned.

Respectfully submitted,

A handwritten signature in black ink that reads "Henry Goldberg". The signature is written in a cursive style with a large, prominent "H" and "G".

Henry Goldberg

Joseph A. Godles

Goldberg, Godles, Wiener & Wright

Counsel for the Harbinger Capital Partners Funds

Attachment

Attachment 1

Harbinger Business Model

Harbinger plans to develop a nationwide terrestrial broadband mobile 4G LTE network, which, without regard to satellite coverage, will provide wireless data on a nationwide basis. The network will be operated on an open access basis. It will employ MSS spectrum, Ancillary Terrestrial Component (“ATC”) spectrum, and terrestrial-only spectrum, as well as spectrum hosting and pooling agreements, all supplemented as appropriate with roaming agreements. As noted, even without regard to satellite coverage, this combination of spectrum and technologies will enable Harbinger to bring the latest 4G terrestrial wireless broadband technology to underserved areas.

Available Spectrum

At the outset, the network will have no less than 23 MHz of spectrum, consisting of 8 MHz of 1.4 GHz terrestrial spectrum, access to 5 MHz of 1.6 GHz terrestrial spectrum and 10 MHz of MSS/ATC L-band spectrum. Through a cooperation agreement with Inmarsat and associated waivers of the Commission’s ATC rules, by 2013 Harbinger will have access to an additional 30 MHz of ATC spectrum.

Harbinger also is discussing with other Commission licensees the possibility of hosting or pooling their spectrum in order to enable them on the terrestrial wireless network, *i.e.*, the spectrum would be incorporated into the infrastructure of the terrestrial wireless network. The hosted or pooled spectrum then could be integrated with Harbinger’s spectrum to enhance the broadband capacity of the terrestrial network.

Network Overview

As planned, the network will consist of SkyTerra’s next generation satellites, approximately 36,000 terrestrial base stations, multi-frequency mode user handsets and other consumer devices, a terrestrial cell site and backhaul network, network operations centers, and the networks of other terrestrial carriers with whom Harbinger plans to have roaming agreements.

Thus configured and equipped, the network will support a rapidly growing demand for mobile data and the increasing number of devices using wireless broadband connections. After the construction of additional terrestrial

base stations, the network will be able to support higher numbers of wireless subscribers, increasing spectrum utilization more than 200% between 2011 and 2013. By 2015, the company expects to serve more than 40 million connected consumer terrestrial devices on a wholesale basis.

Future Terrestrial Customers

The company intends to be a wholesale only, data only network operator, providing a competitively-priced 4G option, including network, operations and spectrum. A three-tiered pricing plan (tiered, flat rate and advanced) will be offered. Potential retail distribution customers would include PC manufacturers, national retailers, service providers without wireless capacity, CE manufacturers and mobile providers. Unrestricted access will allow retail distribution customers to completely own the relationship with the end user. ATC devices will be subsidized to enable retail distribution customers to sell devices at conventional prices.

Fostering Competition

The network will enhance competition in the terrestrial mobile broadband wireless industry and help meet increasing consumer demands for high-capacity wireless mobility. Without regard to satellite coverage, the terrestrial network will achieve population coverage of at least 260 million by 2015, which is comparable to the coverage provided by other nationwide terrestrial carriers.

Efficient use of spectrum and network assets will not require massive capital spending, allowing for competitive pricing. The wholesale business model will mean that Harbinger is committed to the success of the retail customers, enabling competitive carriers and new entrants to enjoy a level playing field in network performance and economics. With access to a truly open network, retail distribution customers can develop new business models and generate new revenue sources.

Timeline

LTE devices and chipsets are already in development, with mobile modems scheduled for commercial availability in the second half of 2010 and handsets following in late 2011. Service will begin in two trial markets, Denver and Phoenix, with a commercial launch before the third quarter of 2011 providing service to up to 9 million POPs. All major markets will be installed by the end of the second quarter of 2013.

Attachment 2

Conditions

1. The conditions set forth below shall apply to the Applicants SkyTerra Communications, Inc. and Harbinger Capital Partners Funds, to their successors and assigns, and to any affiliate of SkyTerra Communications, Inc. (collectively, "SkyTerra"). For the purpose of the conditions set forth below, an "Affiliate" of any person means any other person directly or indirectly controlling, controlled by, or under common control with, such person at the time the determination of affiliation is being made.
2. These conditions apply in addition to any other prohibitions, restrictions, or requirements that might be applicable to SkyTerra or its operations, now or in the future.
3. **Condition 1.** SkyTerra shall not, directly or indirectly, enter into any agreement to make its spectrum used by its terrestrial network in the 1525-1559 MHz/1626.5-1660.5 MHz band ("L-band") available to an entity that, at the time the agreement is entered into, is the largest or second largest wireless provider without receiving prior Commission approval. Approval shall be at the sole discretion of the Commission (or one of its Bureaus, acting on delegated authority). For purposes of this Order, the largest or second largest wireless provider means the largest or second largest provider of commercial mobile radio services ("CMRS") and wireless broadband services (including the provider's Affiliates) measured by aggregate nationwide revenues of the provider and its Affiliates for such services. This Condition 1 shall not restrict SkyTerra's customers from roaming on the network of the largest or second largest wireless provider.
4. Violation of this Condition 1 shall render SkyTerra's authorizations null and void without any further action required by the Commission.
5. **Condition 2.** Without regard to satellite service, SkyTerra shall construct a terrestrial network to provide coverage to at least 100 million people in the United States by December 31, 2012; to at least 145 million people in the United States by December 31, 2013; and to at least 260 million people in the United States by December 31, 2015. For purposes of this Condition 2, "terrestrial network" shall mean the network comprised of: (a) SkyTerra's L-band spectrum used by its terrestrial network; (b) other terrestrial spectrum that Skyterra is the licensee of or has access to under a spectrum manager lease or *de facto* transfer lease and deploys to provide the coverage and level of service requirements described in the paragraph 6; and (c) any other terrestrial spectrum that is used by SkyTerra's terrestrial network or is made available to SkyTerra for pooling with its spectrum and that SkyTerra deploys to provide the Coverage and level of service requirements defined in paragraph 6. "Spectrum that is used by SkyTerra's terrestrial network" means spectrum that is licensed to or controlled by a party other than SkyTerra that has been incorporated into the infrastructure of SkyTerra's terrestrial network.
6. "Coverage" means service provided by terrestrial base stations with a signal level sufficient to provide commercially viable mobile broadband service to the entire covered population. Throughout its coverage area, SkyTerra's terrestrial network must be interconnected with the public Internet and must provide, without regard to satellite connectivity, terrestrial service to mobile terminals or stations (*e.g.*, handsets) operated by end users and by persons roaming on its system; service must be to at least one end user that is not affiliated with SkyTerra. The terrestrial network must be capable throughout the coverage area of providing speeds to end users at least at a level commensurate with deployments of terrestrial networks using "fourth-generation" ("4G") technologies, such as the 3GPP Long Term Evolution (LTE) or Worldwide Interoperability for Microwave Access ("WiMAX") standards. The mobile stations must be able to originate data sessions to and receive information from other servers through the public Internet.
7. Beginning on October 31, 2010, and every six months thereafter, SkyTerra shall file reports

detailing its progress towards meeting the construction and terrestrial service requirements described in this Condition 2, including descriptions of the deployment of the terrestrial network and the population covered. The reports due immediately after the milestone dates set forth above, specifically, the reports due on April 30, 2013, April 30, 2014, and April 30, 2016, shall include maps showing SkyTerra's terrestrial system and the terrestrial system's coverage and separately showing SkyTerra's satellite coverage as of the prior December's milestone date; the reports shall also include the technical assumptions that form the basis of the maps and coverage areas and shall contain other supporting documents showing in detail SkyTerra's compliance with the construction and service requirements. All such reports may be filed on a confidential basis. SkyTerra may determine the population included within its service areas using either the 2000 or 2010 census data but not both.

8. Violation of this Condition 2 shall render SkyTerra's authorizations null and void without any further action required by the Commission.

9. **Condition 3.** SkyTerra shall not, in any Economic Area, in any rolling 12-month period (as determined at the end of every calendar quarter), directly or indirectly, provide via its terrestrial network, to any combination of the largest and second largest wireless providers (as defined in Condition 1), or any of their respective Affiliates, traffic accounting for more than 25 percent of total bytes of data carried on its terrestrial network, without prior Commission approval. Commission approval shall be at the sole discretion of the Commission (or one of its Bureaus, acting on delegated authority). For purposes of this Condition 3, "terrestrial network" shall have the same meaning as in Condition 2. Compliance with the 25 percent limit contained in this Condition 3 shall be determined separately for each Economic Area and shall be calculated at the end of each calendar quarter by dividing the total bytes of traffic carried on SkyTerra's terrestrial network in an Economic Area on behalf of the largest and second largest wireless providers and their Affiliates during the previous twelve months (the numerator) by the total bytes of traffic carried on SkyTerra's terrestrial network in that Economic Area during the same period (the denominator) and multiplying by 100 to express the result as a percentage.

10. The term "Economic Area" has the meaning set forth in Section 90.7 of the Commission's regulations (47 C.F.R. § 90.7), and is based on Economic Areas as defined by the Bureau of Economic Analysis of the United States Department of Commerce.

11. This Condition 3 shall become effective in an Economic Area twelve months after SkyTerra first provides service in that Economic Area. For purposes of this Condition 3, providing "service" is defined as providing one gigabyte of chargeable traffic over SkyTerra's terrestrial network to, or on behalf of, SkyTerra's customers in the relevant Economic Area and excludes any traffic generated for test purposes from which SkyTerra does not generate revenue. For purposes of this Condition 3, traffic generated by SkyTerra's customers' roaming on the network of the largest or second largest wireless provider shall not count toward the 25 percent limit. If SkyTerra enters into an agreement to provide service to an entity that is not the largest or second largest wireless provider or an Affiliate thereof at the time the agreement is entered into and that entity subsequently merges with, is acquired by, or otherwise comes under common control with the largest or second largest wireless provider, then the 25% limit contained in this Condition 3 shall not apply to the traffic subject to that agreement unless, and only to the extent that, the Commission (or one of its Bureaus, acting on delegated authority) so orders in light of the relevant circumstances.

12. If SkyTerra exceeds the 25 percent limit contained in this Condition 3: (1) in the case of an initial violation, the violation shall be treated as a continuing violation, and SkyTerra shall be subject to a forfeiture of up to the maximum amount specified in Section 1.80(b)(3) of the Commission's rules, 47 C.F.R. § 1.80(b)(3), as may be amended from time to time; and (2) in the case of a subsequent violation in the same Economic Area, SkyTerra's authorizations shall be rendered null and void without any further

action required by the Commission. Each violation in an Economic Area shall be considered a separate act or failure to act and the forfeiture shall be calculated separately for each Economic Area.

13. To ensure compliance with this Condition 3, beginning on April 30, 2011, and every three months thereafter, SkyTerra shall report, by Economic Area in service (as defined in paragraph 11), the date on which provision of service commenced, the total number of bytes carried on the terrestrial network during the twelve month period ending one month prior to the date of the report, and the total number of bytes carried on the terrestrial network on behalf of the largest and second largest wireless providers during the twelve month period ending one month prior to the date of the report. All such reports may be filed on a confidential basis.