Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the matter of	)	
	)	
The Current Shareholders of	)	File No. _____
Inmarsat plc	)	
Transferor,	)	
	)	
Harbinger Capital Partners Funds,	)	
Transferee,	)	
	)	
Applications for Authority to Transfer Control of	)	
Inmarsat Hawaii Inc. and Inmarsat, Inc.	)	
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NARRATIVE

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NARRATIVE

This Narrative is a revised version of a Narrative that was filed on August 22, 2008. The reasons that the Narrative has been revised are described below.

In the version of the Narrative that was initially filed, Harbinger Capital Partners Funds[1] (collectively referred to herein as "Harbinger") and SkyTerra Communications, Inc.

[1] These funds consist of Harbinger Capital Partners Master Fund I, Ltd. (the "Master Fund") and Harbinger Capital Partners Special Situations Funds, L.P. (the "Special Situations Fund"). The exact percentages to be held by each fund will vary depending upon market conditions and other factors. Both funds are, however, under the same ultimate control, so changes in the two funds' relative percentages would have no material impact on the transfers of control that are proposed herein. Currently, another Harbinger fund, Harbinger Capital Partners Fund I, L.P. (the "Partners Fund") has an interest in SkyTerra, but it is contemplated that the Master Fund and the Special Situations Fund will absorb that interest by the time of the occurrence of either transaction. A fourth fund, Harbinger Co-
(footnote cont'd on next page)

("SkyTerra") requested[2] Federal Communications Commission ("FCC" or "the Commission") consent to the following transactions:

(i) the transfer of control of SkyTerra Subsidiary, LLC ("SkyTerra Sub"),[3] from SkyTerra (as it is currently controlled) to Harbinger;[4] and

(ii) the transfer of control of Inmarsat Hawaii Inc. and Inmarsat, Inc. from the current shareholders of Inmarsat plc ("Inmarsat")[5] to Harbinger.[6]

In the version of the Narrative that was filed last August, the parties requested that all of the above-mentioned transfer of control applications be processed as a group. On March 4, 2009, however, the parties requested instead, based on changes in the financial markets and the need to maintain maximum flexibility, that the Commission separate processing of the

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

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

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

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

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

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

applications proposing to transfer control of SkyTerra Sub from the applications proposing to transfer control of Inmarsat Hawaii Inc. and Inmarsat, Inc. They also sought expedited processing of the applications proposing to transfer control of SkyTerra Sub.

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

I. INTRODUCTION AND SUMMARY

As set forth herein, the combination of SkyTerra and Inmarsat would yield enormous public interest benefits. It would enhance spectrum efficiency in the L-band, while solidifying the foundation for the development of an integrated satellite-terrestrial communications network that would provide critical public safety services, essentially immune to local disasters, and coverage for consumer handsets both to the most rural and underserved areas of this country and Canada and to urban centers.

By combining the resources and expertise of SkyTerra and Inmarsat, and the financial strength and investment of Harbinger, there would be created a stronger, more operationally

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

efficient organization of global reach that would be better able to realize the promise of ubiquitous wireless coverage of North America through an integrated satellite-terrestrial communications network. More than it is possible to achieve pursuant to the companies' Cooperation Agreement,[8] the combination of these entities would facilitate the more rapid roll out of the innovative mobile satellite services-ancillary terrestrial component ("MSS-ATC") services envisioned today, with both advanced satellite and terrestrial services being the result. As a combined company, they would have the resources and the technical and operational efficiencies to make the most of contiguous blocks of spectrum and increased technical and operational flexibility, unencumbered by the limitations on the coordination of shared spectrum by two companies with divergent business interests and to develop innovative technologies in the future.

As demonstrated herein, there will be no adverse effect on competition. Much of SkyTerra's and Inmarsat's businesses are complementary: For example, Inmarsat reports that over 60% of its sales are for global maritime and aeronautical services, which SkyTerra does not offer. Moreover, Inmarsat's leading land mobile service is a satellite high speed data service (BGAN), while SkyTerra offers only low speed (4.8 kbps) service today. SkyTerra on the other hand provides a "push-to-talk" functionality that Inmarsat does not offer, and is focusing on the future on its ATC business model aimed primarily at the mass-market while Inmarsat has not pursued ATC over its network. In all events, as the Commission has recognized, satellite

[8] Cooperation Agreement between and among Mobile Satellite Ventures, L.P., Mobile Satellite Ventures (Canada) Inc., SkyTerra Communications, Inc., and Inmarsat Global Limited (Dec. 20, 2007), *available at* http://www.sec.gov/Archives/edgar/data/756502/000114420407068694/v097951_ex10-1.htm (included in a February 28, 2008 SkyTerra Communications, Inc., Form 10-K Filing with the Securities and Exchange Commission) ("*Cooperation Agreement*"). Since the time that the Cooperation Agreement was executed, "Mobile Satellite Ventures" has been changed to "SkyTerra" in the company names of the first two parties to the agreement.

communication services are characterized by vibrant competition from numerous players including new entrants and new technologies.

Two interrelated transactions, both of which are subject to FCC and other regulatory approvals, are contemplated. Initially, Harbinger will become SkyTerra's controlling stockholder by exercising warrants to purchase additional SkyTerra common stock and becoming the owner of SkyTerra shares that are currently held in escrow. This proposed transaction is the subject of separate transfer of control applications, including a separate, stand-alone narrative. Harbinger's control over SkyTerra will also give it control over SkyTerra's operating subsidiary, SkyTerra LP, and SkyTerra LP's wholly-owned FCC licensee subsidiary, SkyTerra Sub. Then, upon successful conclusion of the offer by SkyTerra, under the control and at the direction of Harbinger, for Inmarsat as proposed in the instant transfer of control applications, SkyTerra will become Inmarsat's sole shareholder. Harbinger will then proceed to merge the operation of Inmarsat and SkyTerra.[9] The reasons and basis for this sequential process and the associated waivers of the Commission's rules that are requested are set forth in Section II.C below.

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

II. DESCRIPTIONS OF THE TRANSACTION

A. The Parties

(1) SkyTerra

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

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

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

(2) Inmarsat

Inmarsat is a U.K. company that (together with its subsidiaries) operates a network of eleven geostationary satellites. Its satellite orbital locations are filed at the International Telecommunication Union through the United Kingdom. Inmarsat is a leading provider of global mobile satellite communications services, with the majority of its revenue from global maritime and aeronautical communications services. Inmarsat also supports land mobile voice and data applications, including in North America, which applications are discussed further herein. Inmarsat, through its wholly-owned subsidiaries, Inmarsat Hawaii Inc. and Inmarsat, Inc., holds the FCC authorizations identified in Attachment A hereto. Inmarsat Hawaii Inc. is a Hawaii corporation and Inmarsat, Inc. is a Delaware corporation.

(3) Harbinger

The Harbinger Capital Partners Funds are investment funds founded in 2001 by Philip A. Falcone. The Master Fund is an exempted company organized under the laws of the Cayman Islands. The Special Situations Fund is a Delaware limited partnership. A more detailed description of these funds and their ownership structure is set forth in the Declaratory Ruling Petition that has been filed as part of the applications seeking the Commission's consent to transfer control of SkyTerra to Harbinger. A copy of this Declaratory Ruling Petition is

attached to this Narrative for informational purposes as Attachment B. Mr. Falcone, who is a U.S. citizen, has ultimate control of the funds.

Based upon publicly-available information, Harbinger believes that it currently holds approximately 29% of the issued and outstanding ordinary (voting) shares of Inmarsat and also holds convertible bonds in Inmarsat. Harbinger also holds an approximately 49% equity interest and an approximately 48% voting interest in SkyTerra,[10] plus warrants for additional voting shares of SkyTerra; and the right to acquire additional shares of SkyTerra out of escrow once the Commission has consented to transferring control of SkyTerra Sub to Harbinger.[11] In addition, Harbinger owns approximately 31% of the voting shares and approximately 44% of the equity of TerreStar Corporation ("Terrestar"), as well as debt instruments in TerreStar. TerreStar's (approximately) 88% subsidiary, TerreStar Networks Inc., holds an FCC letter of intent ("LOI") authorization for the launch and operation in the United States of TerreStar-1, a Canadian-licensed S-band MSS satellite that will serve the United States and Canada. Harbinger does not control TerreStar, nor would any of the proposed transactions give Harbinger control of TerreStar.

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

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

[11] These escrowed shares consist of: (1) voting shares amounting to 0.91% of SkyTerra's voting stock and 0.41% of SkyTerra's total equity that were placed in escrow in connection with an April 2008 transaction in which Harbinger acquired SkyTerra shares from various Apollo funds; (2) non-voting shares amounting to 7.27% of SkyTerra's total equity that were transferred to Well Fargo Bank, National Association ("Wells Fargo") and placed in escrow in connection with a September 2008 transaction in which Harbinger acquired SkyTerra shares from TerreStar Corporation; and (3) voting shares amounting to 3.35% of SkyTerra's voting stock and 1.50% of SkyTerra's total equity that were placed in escrow when Wells Fargo acquired them in January and February 2009.

interest[12] of 10% or more (and, in each case, less than 25%): Satelites Mexicanos Sa de CV; Leap Wireless; and The New York Times Company.

B. The Transaction

The transfer of control of Inmarsat to Harbinger would be accomplished either through the consummation of an offer[13] by SkyTerra[14] (or a subsidiary of SkyTerra) pursuant to the U.K.'s City Code on Takeovers and Mergers ("Code") for all of the issued and to be issued shares of Inmarsat (other than those already held by Harbinger) or otherwise by way of a United Kingdom ("U.K.") scheme of arrangement with respect to the shares of Inmarsat.[15] As part of the financing of the transaction, Harbinger would contribute to SkyTerra Harbinger's currently-owned shares of Inmarsat and Harbinger's convertible bonds in Inmarsat.[16] In exchange for such contributions, Harbinger would be issued additional shares of voting common stock in SkyTerra. It is also anticipated that Harbinger would purchase additional voting stock in SkyTerra as is necessary to finance the acquisition of Inmarsat, so that at the conclusion of the transfer of control of Inmarsat, it is expected that Harbinger would own in excess of 85% of the combined entity.

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

[13] Hereinafter referred to as a "tender offer" or an "offer," such terms to be used interchangeably.

[14] But see footnote 9.

[15] Schemes of arrangement are discussed in further detail below, but briefly, a cancellation scheme of arrangement under U.K. Companies Act 2006 would involve the existing share capital of Inmarsat being cancelled and new shares being issued to the acquiring company (being SkyTerra or a subsidiary of SkyTerra). Therefore, a cancellation scheme of arrangement achieves the same end result as an acquisition of the entire issued and to be issued shares of Inmarsat but by a different corporate mechanism that does not involve a transfer of shares. The terms "scheme of arrangement" and "scheme" are used interchangeably in this Narrative.

[16] This may be structured by way of Harbinger contributing shares in one or more companies/funds whose sole material asset is the Inmarsat shares and/or convertible bonds.

Under the contemplated structure,[17] Harbinger's proposed control of Inmarsat would be exercised through SkyTerra.[18] Harbinger's ownership of up to 100% of SkyTerra's voting stock would give it control of SkyTerra, and SkyTerra's ownership (directly or through a wholly-owned subsidiary) of up to 100% of Inmarsat's voting stock would give it control of Inmarsat.

For clarification, three organizational charts are attached to this Narrative as Attachment D. The first chart shows the current ownership structure, under which Harbinger has a non-controlling interest in each of SkyTerra and Inmarsat. The second chart shows the ownership structure that will be in place following consummation of the proposal to transfer control of SkyTerra to Harbinger. At this time, Harbinger will continue to have a non-controlling interest in Inmarsat. In the final contemplated stage (as shown in the third chart), following consummation of the proposal to transfer control of Inmarsat, Harbinger will have contributed its interests in Inmarsat to a Harbinger-controlled SkyTerra, which in turn, directly or through a to be created subsidiary, will control Inmarsat.

C. Sequence of Transactions and Requested Waivers

Inmarsat is organized as a public limited company under the laws of England and Wales, hence any offer for Inmarsat would be regulated by the Code as overseen by the U.K. Panel on Takeovers and Mergers (the "Panel"). Proceeding in the manner proposed is necessary because the process is shaped by the Code.

Under the Code, the normal procedure for making an offer is to announce a "firm intention to make an offer" under Rule 2.5. Once such an announcement has been made, the

[17] As stated in the Narrative submitted with the applications, this structure may change, in which case the applications will be amended. See footnote 9.
[18] But see footnote 9.

offeror must proceed within 28 days of the announcement to make an offer at a price no less than the price stated in the Rule 2.5 announcement. For this reason, the financial adviser to the offeror will go through a "cash confirmation" process prior to the Rule 2.5 announcement, where the financial adviser performs due diligence to assure itself that the offeror has obtained the committed financing required to implement the offer. This financing is for all practical purposes unconditional - unlike the normal financings for U.S. tender offers.

Following a Rule 2.5 announcement, the Code normally allows 109 days for an offer to complete. The Code does, however, explicitly provide for circumstances where the offer is referred "unexpectedly" for a lengthy review by the European Union ("EU") or U.K. competition authorities, with any offer being required to lapse under these circumstances (any committed financing also being permitted to lapse at the same time). If the EU/U.K. competition authorities approve the deal, the offeror has 21 days to make up its mind whether to announce a new offer,[19] which is allowed its own period of 109 days in which to successfully complete.

Although this provision, by its terms, refers to clearances by the EU or U.K. competition authorities, and does not apply to applications to other regulators (on the basis that such application processes are less familiar to market participants in the U.K.), the Panel suggested that Harbinger follow it with respect to U.S. regulatory approvals in this case and Harbinger has committed to the Panel that it would do so. Accordingly, Harbinger will announce its intention to make a firm offer or not for Inmarsat within 21 days of final U. S. regulatory approval, unless a longer period for such announcement is authorized by the Panel.

[19] Rule 12.2(ii) of the Code states that: "at the end of the competition reference period, if the offer is allowed to proceed (whether conditionally or unconditionally), (A) any cleared offeror or potential offeror must, normally within 21 days of the offer's being allowed to proceed, clarify its intentions with regard to the offeree company by making an announcement either of a firm intention to make an offer for the offeree company in accordance with Rule 2.5 or that it does not intend to make an offer for the offeree company…"

The U.K. Takeover Code (Rule 30.1(a)) would then normally allow 28 days from the announcement of such firm intention for the actual offer to be issued to the target company shareholders.

Under the Code, the Panel could permit more time for an announcement of a firm intention to issue an offer, or for the issuance of such offer itself, but that would not be the ordinary course, as the rules themselves reflect. Modest extensions for the issuance of offers have been granted, for example, to accommodate court schedules for the approval of alternative takeover schemes (discussed below), but Harbinger has been advised by U.K. counsel that the grant of any such extension in the absence of the support of the target company would likely be brief.

Under U.K. law, a possible alternative to a tender offer for acquiring control of a company is a court approved cancellation scheme. Such a scheme of arrangement may be effected under Section 899 of the U.K. Companies Act 2006.

In the context of takeover, a scheme of arrangement may take different forms. One form is a "cancellation scheme," under which all the issued shares of the target company not already owned by the offeror are cancelled and the reserve arising on cancellation is capitalized and applied in paying up new shares which are issued directly to the offeror in exchange for the offeror paying cash and/or issuing its own securities to the existing shareholders of the target company in proportion to their holdings. An alternative form is a "transfer scheme," under which all the issued shares of the target company not already owned by the offeror are transferred to the offeror in exchange for the offeror paying cash and/or issuing its own securities to the existing shareholders of the target company in proportion to their holdings. The third form

is a "hybrid scheme," under which some of the issued shares of the target company are cancelled and the remainder are transferred.

While the scheme and tender offer processes have their differences, the end result under all three procedures is the same. Instead of holding shares in the target company, the existing shareholders of the target company will receive cash and/or hold securities in the offeror in the same proportions as their existing holdings in the target company, and the target company will become a wholly-owned subsidiary of the offeror.

An important difference between a scheme and a tender offer is that a scheme does not constitute an "offer" to the public: it takes effect by operation of law. It is an arrangement between a target company and its shareholders which, if approved by the requisite majority of target company shareholders and subsequently sanctioned by the court, becomes binding on all the shareholders of the target company by operation of law whether they have voted in favor of it or not. A scheme is, however, an "offer" for the purpose of the Code (see paragraph 3(b) of the Introduction to the Code and the definition of "Offer"). The provisions of the Code apply to an offer effected by means of a scheme of arrangement in the same way as they apply to a tender offer, with certain specified exceptions (see Appendix 7 to the Code).

Under the Code, the normal procedure for making an offer by way of a scheme of arrangement is to announce a "firm intention to make an offer" under Rule 2.5 of the Code (in the same way as the procedure for a tender offer is commenced). The requirement for a "cash confirmation" is precisely the same for the announcement of a scheme of arrangement as it is for a tender offer. The announcement is followed by the posting of a scheme document to the target company's shareholders. Unlike the offer document in the context of a tender offer, the scheme document is in fact the target company's document (rather than the offeror's document). The

scheme document will contain a notice convening a meeting of the target company's shareholders to consider and vote upon the scheme of arrangement. Subject to the passing of the necessary shareholders' resolutions (the scheme must be approved by a 75% majority in value and a 50% majority in number of each class of shareholders present and voting at the meeting), application will then be made to the High Court of England and Wales to approve the scheme. If the court approves the scheme, then the scheme becomes effective and the cancellation and/or transfer referred to above will take place.

A variant of the above tender offer and scheme of arrangement approaches would be to employ a trust structure as the acquisition vehicle for an offer for Inmarsat. Under this approach, Harbinger and SkyTerra would announce a firm offer under Rule 2.5, as described above, but with a trust as the initial acquiring entity that (following regulatory approvals) would then transfer control to Harbinger/SkyTerra. Such a structure could benefit from the FCC's expedited review procedures for the initial step of transferring control to a trustee to facilitate tender offers.[20] Under these procedures, there would be no need for the offer to lapse, or for the offer price and financial commitments made to Harbinger and/or SkyTerra to be left in place for a protracted period or for them to lapse and then be re-committed, as the offer could be completed by transferring control to a trustee, within the allotted 109 days. However, Harbinger and SkyTerra did not believe that the trust structure would be commercially feasible for the offer that they propose to make for Inmarsat for the reasons described below and they did not wish to progress an offer for Inmarsat using this structure.

The particular concern with the Commission's tender offer mechanism is that a trustee would be required to operate Inmarsat. Inmarsat is a very substantial company in the

[20] *In Re Tender Offers and Proxy Contests*, Policy Statement, 59 R.R.2d 1536 (1986).

U.K.[21] whose services and customer base are viewed by U.K. authorities as sensitive, and the operation of Inmarsat by a trustee pursuant to the Commission's tender offer mechanism would effectively place Inmarsat in "hibernation" for an extended period of time.

Moreover, as noted above, any tender offer for Inmarsat will be subject to the rules of the Code. One of the six General Principles of the Code is that "…holders of securities of an offeree company must have sufficient time and information to enable them to reach a properly informed decision on the bid."[22] This General Principle is, in turn, reflected in the specific Rules of the Code: "Shareholders must be given sufficient information and advice to enable them to reach a properly informed decision as to the merits or demerits of an offer."[23]

It is contemplated that under any tender offer for the shares of Inmarsat, the shareholders of Inmarsat would be given the choice of receiving cash or shares in SkyTerra, or a combination of the two, so that they could, if they so wished, continue to participate in the combined business of the companies. However, if Inmarsat were subjected to a trustee mechanism, Harbinger and SkyTerra had questions as to their ability to give the Inmarsat shareholders the information they needed to reach a properly informed decision, as the required by the General Principles and Rules of the Code referred to above, given:
(i) Harbinger/SkyTerra's lack of direct management control over the business of Inmarsat during the pendency of the trustee mechanism; and (ii) the fact that such a large part of the combined SkyTerra/Inmarsat business would be subject to the trustee mechanism for an extended period and there would be the potential risk of forced divestiture of that part if the FCC transfer of control application were not approved.

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[21] Inmarsat is a constituent member of the FTSE 100 Index, which is comprised of the 100 largest U.K. publicly-listed companies.
[22] *U.K. City Code on Takeover and Mergers*, General Principle 2.
[23] *U.K. City Code on Takeover and Mergers*, Rule 23.

These concerns were reinforced by the fact that the new SkyTerra shares that would be issued to Inmarsat shareholders pursuant to a successful offer or scheme also would need to be accompanied by a prospectus to be issued under the U.K.'s Prospectus Rules. Pursuant to the Prospectus Rules, a prospectus is required to contain all "…information necessary to enable investors to make an informed assessment of…the assets and liabilities, financial position, profits and losses, and prospects of the issuer…."[24] SkyTerra's ability to comply with this standard was exacerbated by the guidance given by the U.K.'s Financial Services Authority ("FSA") that, in order to enable prospective investors to make a reasonable assessment of its future prospects *(i.e.*, one element of the prospectus standard recited above), an issuer, namely SkyTerra, must demonstrate that it controls the majority of its assets;[25] SkyTerra would not satisfy this test during the entire period that Inmarsat would be subject to the Commission's trustee mechanism.

The uncertainties described above would not only risk undermining the feasibility of offering a SkyTerra share alternative to the Inmarsat shareholders, but would also risk undermining the feasibility of raising the financing required to make the offer for Inmarsat.

In addition, SkyTerra and Harbinger saw substantial practical difficulties if the trustee had to sell Inmarsat because the FCC refused to grant the transfer of control application. There would be two options for such a sale:

- a sale of shares in the public market. This would have been impractical, since by that time, Inmarsat would have been automatically delisted from the London Stock Exchange, which would occur if more than 75% of Inmarsat shares ended up in the

[24] U.K. Financial Services and Market Act of 2000 at Section 87A(2).
[25] U.K. Listing Rules 6.1.4 and 6.1.6.

trustee's hands as a result of the tender offer process. The market sale of shares in an unlisted company would be unattractive to a broad base of investors. Alternatively, relisting in London (the most attractive place for listing a U.K.-established company) might well not be possible due to the requirements of Listing Rules 6.1.4 and 6.1.6 referred to above; or

- the number of shares amounting to control of Inmarsat could be sold privately to a strategic investor. Such a new buyer would in turn then need to embark upon another FCC-transfer of control process, thereby significantly extending the period in which Inmarsat would remain under the operational control of a trustee.

Finally, SkyTerra's and Harbinger's concerns with respect to the Commission's trustee mechanism were not confined to the U.K. In addition to being regulated by the British National Space Centre and Ofcom in the U.K., Inmarsat is subject to regulation in a number of other jurisdictions. For example, there is a potential requirement for change of control approval in various jurisdictions. Although, in order to comply with the confidentiality obligations under the Code, SkyTerra and Harbinger did not approach any of the relevant regulatory authorities on a named basis prior to the public announcement of their intention to make an offer for Inmarsat, SkyTerra and Harbinger believe that use of the Commission's trustee mechanism might complicate the approval process in a number of these jurisdictions.

Another option under the Code would have been for Harbinger and SkyTerra to make a Rule 2.5 announcement of a 'pre-conditional offer'. This is an offer the making of which (as contrasted with the closing of which) is expressly conditioned upon (i) achieving approval (on acceptable terms) from the FCC; and (ii) (with the consent of the Panel) obtaining financing.

As such, under this structure, the firm offer would only formally be made once such pre-conditions had been satisfied (when the normal 109 day timetable would commence).

However, with such a 'pre-conditional offer' Harbinger and SkyTerra would be committed on announcement to the offer price stated in their offer announcement and to proceeding at that offer price in the event that the stated conditions were satisfied.

In the United States, the right of the offeror to withdraw from an offer on the basis of a material adverse change affecting the offeree company is a matter of contractual negotiation. In contrast, in the U.K., for an offeror to be permitted to withdraw from an offer under the Code on the grounds of a material adverse change affecting the offeree company "…requires an adverse change of very considerable significance striking to the heart of the transaction in question, analogous…to something that would justify frustration of a legal contract…" (Panel Statement 2001/15). Having a pre-conditional offer open for an extended period to allow for regulatory approval processes to be undertaken can therefore be particularly problematic in the U.K.

As to financing commitments, Harbinger, SkyTerra and their financial advisers would have had to confirm in writing to the Panel at the time of announcement that they were not aware of any reason why financing should not be available within 21 days of receiving FCC approval on satisfactory terms. Given that the announcement of a 'pre-conditional offer' would be made immediately prior to the initiation of the FCC consent process, such a confirmation could have been very difficult to obtain; moreover, the Panel might not have permitted Harbinger and SkyTerra to later invoke the financing condition should the finance market deteriorate and financing terms become less attractive, or should Inmarsat have suffered a material adverse change, during the period of the FCC approval process. Accordingly, under this option

Harbinger and SkyTerra would have been tied both to an offer price (in the face of highly uncertain equity markets) and to the potential requirement to proceed with such an offer in spite of a material worsening in available financing terms or in the financial position of Inmarsat. Notwithstanding their current intention to acquire Inmarsat, Harbinger and SkyTerra believe that the risk involved in announcing an immediate offer, even pre-conditioned on FCC consents being obtained, is too great, given the length of time that will likely be required for the FCC review.

For this reason, although Harbinger and SkyTerra ultimately intend to seek the recommendation of the Board of Inmarsat for a firm offer following receipt of FCC clearances, they have yet to propose a firm offer to the Board.

Another approach under the provisions of the Code is for an offeror to make a Rule 2.4 announcement of a "possible offer" for the target company. Such announcements are relatively commonplace in U.K. takeover practice, for example during deal discussions between offeror and offeree (particularly following leaks), and generally serve to update the market as to the progress of these discussions. Such announcements do not compel a potential offeror to proceed with a firm offer; however, a Rule 2.4 announcement will set a price "floor" for any subsequent firm offer if the Rule 2.4 announcement alludes to a price (at the option of the offeror).

During Harbinger and SkyTerra's discussions with the Panel in relation to seeking to reconcile the time required for the U.S. regulatory process with the requirements of the Code, the Panel suggested the possible offer approach that was used in the case of the announcement of a possible offer by Lyonnaise des Eaux for the Northumbrian Water Group, which is set forth in Attachment C. In this approach, the possible offer (for which no potential offer price is stated) is

made explicitly subject to the obtaining of specified regulatory clearances, enabling the relevant regulatory approval process to be completed satisfactorily prior to an offer being made (in the case of the Northumbrian Water offer, this was a lengthy U.K. Water Act reference process: anti-trust clearances were in fact requested and obtained after the firm offer was made, within the normal Code timetable). Harbinger and SkyTerra have followed that suggestion, as reflected in the public announcement regarding Harbinger and SkyTerra's possible offer for Inmarsat which was released on July 25, 2008.

The attraction to Harbinger and SkyTerra of this approach is that (a) no offer price needs to be either agreed with Inmarsat or unilaterally proposed to its shareholders in the immediate term and (b) no financing commitment needs to be kept in place and no letters expressing confidence in obtaining financing need to be provided to the Panel, meaning that Harbinger and SkyTerra are not exposed to volatile equity and financing markets, or any potential material adverse change affecting Inmarsat, during the lengthy FCC review process. If the FCC review process is completed successfully, Harbinger and SkyTerra will then be able to launch a firm offer that will need to complete by the usual 109-day Code imposed deadline.

It is noteworthy that the U.S. Department of Justice considered the Harbinger/SkyTerra possible offer to provide a sufficient basis for conducting its review of the proposed Inmarsat transaction. On August 22, 2008, Harbinger submitted a Hart-Scott-Rodino filing for the possible offer for Inmarsat, and on September 22, 2008, the 30 day Hart-Scott-Rodino waiting period expired without any action from the U.S. Department of Justice's Antitrust Division. No second request was issued.

In the absence of receiving a firm offer at a price that can be recommended by the Board of the offeree and agreement on other key offer terms, it would not be usual U.K. practice

for a company to pro-actively facilitate a possible offer. Accordingly, Inmarsat has indicated that it is not prepared to sign the applications seeking the Commission's consent to transfer control of FCC authorizations held by subsidiaries of Inmarsat, nor to collaborate in any way with Harbinger and SkyTerra regarding pre-offer regulatory clearances. However, Inmarsat has stated in its announcement of July 25, 2008 that it intends to maintain a constructive relationship with Harbinger and SkyTerra throughout the regulatory review process and will consider carefully any future offer that may maximise value for Inmarsat's shareholders as a whole. Given the decision of Harbinger and SkyTerra to utilise the Northumbrian Water Group-style announcement to initiate regulatory clearances, for the reasons provided above, such an offer will not be forthcoming from Harbinger and SkyTerra unless the FCC approval process can first be completed satisfactorily.

To facilitate the process described above, Harbinger and SkyTerra request, pursuant to Section 1.3 of the Commission's rules,[26] that the Commission grant the two waivers described below. Waiver of the Commission's rules is warranted when good cause is shown.[27] A waiver may be granted if the grant "would not undermine the underlying policy objectives of the rule in question" and would serve the public interest.[28] All of these conditions are satisfied in connection with the two waivers requested below because the waivers are consistent with the purposes of the underlying rules and absent waivers Harbinger and SkyTerra would be unable to obtain approval for and consummate transactions that are in the public interest.

[26] 47 C.F.R. § 1.3.
[27] 47 C.F.R. § 1.3; *see also WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969).
[28] *GE American*, 15 FCC Rcd 3385, 3391 (1999).

(1) Waiver of the Commission's Signature Requirement

Inmarsat has informed the parties that it is not prepared to sign the applications seeking the Commission's consent to transfer control of FCC authorizations held by subsidiaries of Inmarsat. For similar reasons, it is not possible at this time to secure any signature on the applications on behalf of the current shareholders of Inmarsat. The parties, therefore, seek a waiver of Section 1.743,[29] which requires that applications filed by corporations be signed by an officer or duly authorized employee of that corporation, and a waiver, to the extent necessary, of any requirement that the applications be signed on behalf of the current shareholders of Inmarsat.

The Commission has allowed the filing of applications without signature in similar circumstances. In its *Tender Offers Notice of Inquiry*, the Commission cited with approval previous cases in which the signature requirement had been waived, stating that it "cannot reasonably allow the technical requirements of the application to make it impossible for an outside party seeking control to file for and obtain prior approval."[30] This principle applies here. If Harbinger/SkyTerra were unable to file applications for transfer of control of Inmarsat's subsidiaries because Inmarsat's signature is lacking, then the "technical requirements of the application" will have made it "impossible" for them "to file for and obtain prior approval." Accordingly, and in keeping with its precedents, the Commission should waive the signature requirement in connection with these applications.

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[29] 47 C.F.R. § 1.743.

[30] *In Re Tender Offers and Proxy Contests*, Notice of Inquiry, 1985 FCC LEXIS 2759, FCC 85-349 at ¶ 12 (rel. Aug. 20, 1985) (quoting *Continental Telephone Corporation*, 41 F.C.C.2d 957, 959 (1973)). *See also Continental Telephone*, 41 F.C.C.2d at 959 ("[W]e must act on such contingent applications so that a qualified buyer can legally assume control in the event the tender offer is successful.")

(2) Waiver of the Time by Which the Transaction Must be Consummated

In addition, the Commission requires notification of the consummation of a transfer of control within a specified number of days after the FCC consents to the transfer of control.[31] For reasons that are discussed above, however, it is not feasible for Harbinger/SkyTerra to commence a tender offer for Inmarsat in the U.K. until after FCC consent has been obtained, and it is likely that the tender offer process will take significantly longer than the amount of time parties typically are given by the Commission to consummate transfers of control. Harbinger and SkyTerra, therefore, request that the FCC's consent to a transfer of control of Inmarsat's subsidiaries run through the end of the period needed to complete the tender offer process in the U.K. (or to complete the court-approved cancellation scheme of arrangement if the offer is implemented by way of scheme).

III. STANDARD FOR REVIEW

The Commission will grant an application for transfer of control when, after considering the benefits and harms to the public interest, on balance grant of the application will serve the public interest, convenience and necessity.[32] The Commission first must assess whether the proposed transaction complies with the applicable parts of the Communications Act of 1934 and with any other applicable statutes, and with the Commission's rules.[33] If so, then the

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[31] *See, e.g.*, FCC Form 312, Schedule A, certification page ("The undersigned represents … that control will not be transferred until the Commission's consent has been received, but that transfer of control or assignment of license will be completed within 60 days of Commission consent.").

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

[33] *See In the Matter of Application of News Corporation and The DirectTV Group, Inc., Transferors, and Liberty Media Corporation, Transferee, for Authority to Transfer Control*, Memorandum Opinion and Order, 23 FCC Rcd 3265, 3276 (2008) ("*Liberty Media/Direct TV Order*"); *see also SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, 20 FCC Rcd 18290, 18300 (2005) ("*SBC-AT&T Order*"); V*erizon Communications, Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, 20 FCC Rcd 18433, 18442-43 (2005) ("*Verizon-MCI Order")*; *Applications for Consent to the Assignment of Licenses Pursuant to Section*

(footnote cont'd on next page)

Commission considers whether the transaction would result in any public interest harms "by substantially frustrating or impairing the objectives or implementation of the Act or related statutes."[34] Finally, the Commission engages in a balancing test that weighs the potential public interest benefits against the potential public interest harms of the proposed transaction.[35]

Notably, in conducting its public interest review, the Commission considers "the broad aims of the Communications Act," including such matters as "enhancing competition in the relevant markets, accelerating private sector deployment of advanced services, ensuring a diversity of information sources and services to the public, and generally managing the spectrum in the public interest."[36] As the Commission has recognized, today's telecommunications marketplace is extraordinarily dynamic,[37] as is the satellite industry.[38] The Commission has found that it should proceed cautiously prior to imposing regulatory burdens during periods of technological change.[39]

310(d) of the Communications Act from NextWave Personal Communications, Inc., Debtor-in-Possession, and NextWave Power Partners, Inc., Debtor-in-Possession, to Subsidiaries of Cingular Wireless LLC, 19 FCC Rcd 2570, 2580-81 (2004); *EchoStar Communications Corp., General Motors Corp. and Hughes Electronics Corp., and EchoStar Communications Corp., Hearing Designation Order*, 17 FCC Rcd 20559, 20574 (2002) ("*EchoStar-DIRECTV HDO*").

[34] *Liberty Media/Direct TV Order*, 23 FCC Rcd at 3277.

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

[36] *See Liberty Media/Direct TV Order*, 23 FCC Rcd at 3277-3278.

[37] *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978, 17372 (2003) (noting the "continually evolving and dynamic nature of telecommunications networks").

[38] *See generally* The Satellite Industry Association, 2008 State of the Satellite Industry Report (June 2008) (providing comprehensive satellite industry statistics), *available at* www.sia.org; *In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of the Competitive Market Conditions with Respect to Commercial Mobile Services*, Twelfth Report, 23 FCC Rcd 2341, 2350 and 2345-2347 (2008) (summarizing use of mobile satellite services in the United States); and *FCC Report and Analysis of Competitive Market Conditions with Respect to Domestic and International Satellite Communications Services*, First Report, FCC 07-34, IB Docket No. 06-67 at ¶ 2 (rel. March 26, 2007) (concluding that "the market for commercial communications satellite services is effectively competitive.").

[39] *See, e.g., Implementation of Section 17 of the Cable Television Consumer Protection and Competition Act of 1992; Compatibility Between Cable Systems and Consumer Electronics*

(footnote cont'd on next page)

IV. COMPLIANCE WITH THE COMMUNICATIONS ACT AND THE COMMISSION'S RULES

SkyTerra already holds a controlling interest in SkyTerra Sub, which has been approved by the Commission.[40] The FCC qualifications of SkyTerra as presently owned, therefore, are a matter of public record. The qualifications of Harbinger are set forth in: (1) the transfer of control applications with which this Narrative is associated, which cover the FCC authorizations listed in Attachment A hereto; and (2) the Declaratory Ruling Petition, a copy of which is attached to this Narrative for informational purposes as Attachment B, that has been filed as part of the applications seeking the Commission's consent to transfer control of SkyTerra to Harbinger.

Subject to a favorable Commission ruling on the waiver requests set forth in Section II.C herein, the proposed transfers of control will be in conformity with all applicable provisions of the Communications Act and the Commission's rules. We note in this regard that the L-band spectrum authorized to Inmarsat is and will remain coordinated by the U.K. The proposed transaction does not add to the amount of U.S. coordinated or licensed spectrum. Accordingly, no issue with regard to how much U.S. coordinated L-band spectrum might be licensed to a single entity is raised.

The proposed transactions raise no national security or law enforcement concerns. Inmarsat and SkyTerra Sub (and SkyTerra) have a long history of cooperating with the United

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Equipment, First Report and Order, 9 FCC Rcd 1981, 1987 (1994) ("[T]he potential for [regulation to result in] a constraining effect is substantially greater…where there is rapid development of new communications technologies and services"); *IP-Enabled Services*, Notice of Proposed Rulemaking, 19 FCC Rcd 4863, 4867 (2004) (noting that in competitive, evolving markets, the Commission should rely "wherever possible on competition and apply[ ] discrete regulatory requirements only where such requirements are necessary to fulfill important policy objectives.").

[40] *In the Matter of Motient Corporation and Subsidiaries, Transferors, and SkyTerra Communications, Inc., Transferee, Application for Authority to Transfer Control of Mobile Satellite Ventures Subsidiary LLC*, Memorandum Opinion and Order and Declaratory Ruling, 21 FCC Rcd 10198 (2006).

States government on issues of national security, and under Harbinger and Sky Terra's control, the parties will continue to do so. The parties understand the importance of Executive Branch concurrence that matters of national security and law enforcement will not be compromised by the proposed transactions and the deference the Commission gives to such agencies relative to the same.[41] The parties have every expectation that they will be able to satisfy any concerns that these agencies may raise.

That leaves then a more general public interest analysis of the transactions which the Commission must undertake. As demonstrated below, the proposed transactions will yield substantial public interest benefits, allowing the parties to increase the efficient use of L-band spectrum and to achieve otherwise unattainable savings and efficiencies in the provision of integrated MSS and ATC services, operational efficiencies in satellite fleet operation, a ubiquitous high-speed mobile telecommunication resource for national defense agencies, public safety entities, and rural areas, and a strong foundation for continued development of new technologies. These benefits would be achieved, moreover, as demonstrated below, without competitive harm, because SkyTerra and Inmarsat focus on substantially different applications and, where there is apparent overlap, they face thriving competition.

V. THE PROPOSED TRANSACTION WILL YIELD SUBSTANTIAL PUBLIC INTEREST BENEFITS

The combination of SkyTerra and Inmarsat will generate significant public interest benefits that flow first and foremost from their ability to achieve more efficient use of L-band spectrum and other assets. As the Commission previously has found, mergers of satellite operators can and do promote the "broad aims of the Communications Act" by generating public

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

interests such as more efficient spectrum use,[42] fleet optimization and management[43] and the deployment of an essential communication system for public safety, first responders and emergency preparedness agencies.[44] The Commission has approved satellite transactions because they enable the merging firms to realize economies of scale and scope,[45] increase innovation[46] and generate significant cost savings.[47] Moreover, the Commission has concluded that such mergers can enable satellite companies to achieve the scale, expertise, and resources required to provide new and enhanced services at competitive prices.[48] As detailed below, the consolidated operation of SkyTerra and Inmarsat will result in all of these pro-competitive benefits and then some.

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[42] *See Constellation, LLC, Carlyle PanAmSat I, LLC, Carlyle PanAmSat II, LLC, PEP PAS, LLC, and PEOP PAS, LLC, Transferors, and Intelsat Holdings, Ltd., Transferee, Consolidated Application for Authority to Transfer Control of PanAmSat Licensee Corp. and PanAmSat H-2 Licensee Corp*., Memorandum Opinion and Order, 21 FCC Rcd 7368, 7391 (2006) ("*PanAmSat/Intelsat Merger Order").*

[43] *Id.* at 7390-7391; *BCE Inc. and Loral Skynet Corp., Transferors/Assignors, and 4363205 Canada Inc., 4363213 Canada Inc., and Skynet Satellite Corp., Transferees/ Assignees, Application to Transfer Control or Assignment of Licenses and Authorizations held by Telesat Canada, Able Infosat Communications, Inc., Loral Skynet Corp., and Loral Skynet Network Servs., Inc. and Petition for Declaratory Ruling,* Order, 22 FCC Rcd 18049, 18055-18056 (2007) ("*BCE/Loral Skynet Merger Order*").

[44] *PanAmSat/Intelsat Merger Order*, 21 FCC Rcd at 7391 and 7394.

[45] *General Electric Capital Corp. and SES Global S.A., Application for Consent to Transfer Control of Licenses and Authorizations Pursuant to Sections 214(a) and 310(d) of the Communications Act and Petition for Declaratory Ruling Pursuant to Section 310(b)(4) of the Communications Act*, Order, 16 FCC Rcd 18878, (2001) ("*GE/SES Merger Order*"); *BCE/Loral Skynet Merger Order*, at 18055; *In the Matter of SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, 20 FCC Rcd 18290,(2005) ("*SBC/AT&T Merger Order*").

[46] *PanAmSat/Intelsat Merger Order, 21 FCC Rcd* at 7386; *SBC/AT&T Merger Order*, 20 FCC Rcd at 18389.

[47] *Motient Corp. and Subsidiaries, Transferors, and Skyterra Communications, Inc., Transferee, Application for Authority to Transfer Control of Mobile Satellite Ventures Subsidiary LLC,* Order, 21 FCC Rcd 10198 (2006) ("*Motient/SkyTerra Order*").

[48] *E.g., PanAmSat/Intelsat Merger Order*,21 FCC Rcd at 7375 (The merger would create a satellite company "with the scale, expertise, and resources needed to pursue development of broadband by satellite at affordable prices that are competitive with today's cable model and DSL services."); *BCE/Loral Skynet Merger Order*, 22 FCC Rcd at 18156 (determining that the merger would have a positive effect in terms of the quality of services or the provision of new or additional services to consumers); *see generally New Skies Satellites Holdings Ltd., Transferor, and SES Global S.A., Transferee, Application to Transfer Control of Authorizations and Notification of Change to Permitted Space Station List*, Public Notice, 21 FCC Rcd 3194 (Int'l Bureau 2006) ("*New Skies/SES Merger Order*").

A. The Proposed Merger Will Unlock the Full Promise of L-Band Spectrum for MSS-ATC Services to Benefit Public Safety Entities, People in Rural Areas, and the Public at Large

The L-band spectrum in which each of SkyTerra and Inmarsat currently operate holds extraordinary promise, but full development of this valuable resource has yet to be realized. Not the least of the new developments resulting from this transaction will be to enhance and accelerate the creation of an integrated MSS-ATC network that will provide new seamless and cost-effective wireless communications services. As the Commission has recognized, such an integrated network would "enhance the ability of national and global telecommunications systems to protect the public by offering ubiquitous service to law enforcement, public aid agencies, and the public. . . ."[49] Such a service would be ideal for public safety and homeland security organizations, as well as first responders, because it can allow for communications to and from the public switched telephone network while also providing Internet connections anywhere on the continent. By allowing seamless switching between terrestrial and satellite components, the integrated network will work in times of disaster when single-method networks are incapacitated. Such integrated satellite and terrestrial service would be uniquely positioned to address the needs of public safety and homeland security, while at the same time providing affordable, broadband communications to the public from the largest cities to the most remote areas of the nation. Such hybrid satellite and terrestrial service will further, as the Commission has recognized, result in "more efficient use of spectrum and benefits not only MSS licensees but also consumers."[50]

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[49] *In the Matter of Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-band, and the 1.6/2.4 GHz Bands*, Memorandum Opinion and Order and Second Order on Reconsideration, 20 FCC Rcd 4616, 4619 (2005) ("*MSS Flexibility Order 2005*"). .

[50] *In the Matter of Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-band, and the 1.6/2.4 GHz Bands*, Report and Order and Notice of Proposed Rulemaking, 18 FCC Rcd 1962, 1977 (2003) ("*MSS Flexibility R&O 2003*")

Achieving such promise is, however, made more difficult and costly by the fact that SkyTerra and Inmarsat today share use of the L-band spectrum with each other and with other operators. Such sharing means that each company's use of the spectrum is subject to coordination, through their respective national administrations, which, in turn, as the Commission has recognized, can result in "substantial cost measured in terms of inefficient operations, large administrative expenses and constant friction between the forced joint venturers."[51]

Separately run operations naturally would be expected to protect not only the core spectrum each uses for particular applications, but also to maintain a cushion of additional spectrum as a margin of error. Coordination agreements address these kinds of issues, but are imperfect mechanisms for doing so.

The impending introduction of MSS-ATC services obviously makes the complexity and cost of coordination issues even more acute. Among other things, the successful introduction of efficient, cost-effective MSS-ATC services that will give first responders and rural residents access to high speed voice and data services requires large contiguous blocks of spectrum, unlike the numerous small "slices" that resulted from prior coordination efforts. More efficient use of the L-band will put SkyTerra and Inmarsat in a position to preserve and improve traditional MSS services, as the net effect will be more usable spectrum.

While SkyTerra and Inmarsat certainly made progress in achieving a new Cooperation Agreement to alleviate some of the contention that has existed between the companies in the past over the use of the L-band spectrum,[52] that Agreement cannot compare in time, cost or

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[51] *MSS Flexibility R&O 2003*, 18 FCC Rcd at 1979-1990 (discussing the particular costs and difficulties of providing terrestrial and satellite services within the same MSS band).

[52] *Cooperation Agreement* at 29.

necessarily the outcome to the efficiency that can be achieved by a combined enterprise with unified objectives. For example, while the Cooperation Agreement seeks to address coordination issues in a forward-looking manner, technological advances, innovation, and public safety and consumer requirements are constantly changing in ways that cannot possibly be entirely foreseen.

The Commission recognized this problem in adjusting its rules in 2005 to facilitate the development of ATC in the band.[53] In explaining the limitations as to what it could accomplish by specific rules to foster ATC while protecting existing MSS services, the Commission stated, "[w]e cannot predict what techniques may be invented or where such techniques will prove most effective, in the MSS component or the ATC component of an MSS-ATC system."[54] The Commission therefore encouraged further private negotiations among the operators in an effort to produce more "efficient interference levels than regulations based on largely hypothetical cases."[55]

The parties have achieved much from the negotiations fostered by the Commission, including agreement to use their best commercial efforts to negotiate revised satellite coordination agreements as necessary to address changing technology and operational requirements.[56] But as the experience of the Mexico City Memorandum of Understanding demonstrates,[57] such ongoing arrangements among parties sharing use of spectrum with divergent commercial interests are difficult to successfully implement long term and do not

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[53] *MSS Flexibility Order 2005*, 20 FCC Rcd 4616.
[54] *Id*. at 4633.
[55] *Id.*
[56] *Cooperation Agreement* at p. 29.
[57] Under the Mexico City Memorandum of Understanding, the L-band operators are supposed to meet annually to adjust spectrum assignments to meet changing requirements, but such negotiations have not occurred since 1999. *MSS Flexibility Order 2005*, at 4629 and n. 90.

necessarily ensure the most efficient outcome will result. Moreover, they do not lend themselves to prompt resolution of pressing needs, as when emergency responders require an immediate adjustment in spectrum assignments within the L-band or even when new technology creates a window of opportunity.

While the parties have attempted to address the rebanding that will be necessary to support ATC in their Cooperation Agreement, the complex mechanisms in that Agreement, the associated financial and other conditions, and the multiple phased options and deadlines[58] reflect at once the progress that has been made by such negotiations and the limitations that are inherent to such agreements. As noted above, it is almost impossible to map out today the most efficient path for transition to meet each party's requirements, and even more so the public need, as those requirements and needs, and technologies themselves are constantly and rapidly evolving.

In contrast, the proposed transaction will enable a combined enterprise, working in concert with the respective administrations, to quickly make more efficient use of the L-band, including as necessary for the rapid, cost-effective and price competitive deployment of MSS-ATC and other future broadband solutions. Rather than trying to negotiate the path and pace of that technology, the combined entity will have a unified incentive and ability to optimize the use of all spectrum and orbital resources, along with the flexibility to manage spectrum and resources most effectively. As such, the proposed transaction will enable the parties to achieve far greater efficiencies than those achievable by the Cooperation Agreement or any other means.

[58] *Cooperation Agreement* at pgs. 6-15.

B. The Proposed Transaction Will Create More Rapid, Lower Cost Deployment of ATC to the Benefit of Rural and Public Safety Users as well as Traditional Terrestrial Wireless Consumers

The successful introduction of MSS-ATC requires the development of integrated satellite and terrestrial technologies on standard wireless handsets and other consumer devices that are substantially similar to current PCS/cellular handsets in terms of aesthetics, cost, form factor and functionality. To develop and bring the costs of such units down to the level enjoyed by existing terrestrial wireless network operators and their customers, achieving economies of scale in chipset and device manufacturing is a must.

The proposed transaction creates a unique ability to achieve scale economies necessary to be price competitive with terrestrial wireless service. In particular, the consolidation of the operations of SkyTerra and Inmarsat will provide economies of scale for chip and handset manufacturers. The point is that, as a combined operation, SkyTerra and Inmarsat can dedicate spectrum for particular purposes, without the uncertainty that can exist when spectrum is shared among entities and without being subject to future shifts in assigned spectrum depending upon the implementation of existing agreements, option exercises, and future coordination, etc. Further, like other satellite transactions approved by the Commission, the proposed transaction will result in an entity with a sufficiently large anticipated customer base to better attract chipset, handset, and other equipment vendors interested in negotiating reasonable contracts as a result of the creation of efficiencies in production costs.[59] Combined, the parties will be able to secure larger volume discounts from suppliers, and pass those lower costs through to consumers in the

[59] *PanAmSat/Intelsat Merger Order*, 21 FCC Rcd at 7391; see generally *SBC/AT&T Merger Order*, 20 FCC Rcd at 18388; *see generally BCE/Loral Skynet Merger Order*, at 18055; *MSS Flexibility R&O 2003*, 18 FCC Rcd at 1975 (recognizing that a handset that combines MSS and ATC functionality results in a "larger consumer market [which] would, in turn allow providers to order larger production volumes, which further reduce the costs of producing phones").

form of lower end-user prices. As the Commission has recognized, large buyers typically are able to negotiate significant discounts from hardware and software vendors.[60] In this way, the transaction holds the potential to bring costs down for public safety users and speed the deployment of MSS-ATC in rural areas across the nation.

MSS services will also benefit by creating a sufficient market to support the development of more consumer friendly handsets at reduced cost. The Commission has acknowledged that this expansion of satellite phone service into the mass market will "lead [ ] to economies of scale and lower prices for consumers"[61] and also will "eliminate operational and transactional difficulties and costs for MSS operators in negotiating separate terrestrial roaming agreements."[62] As a result of the anticipated "[u]rban penetration capability, lower-priced phones, unified numbering, unified billing, and reduced transaction costs could reasonably be expected to result in lower retail prices and greater consumer demand for MSS."[63]

C. The Transaction Will Generate Additional Operating Efficiencies

(1) More Efficient Use of Satellites and Orbital Resources

SkyTerra's and Inmarsat's anticipated fleet management activities would create the opportunity to generate substantial efficiencies by transferring services to newer satellites, optimizing usage of satellite network assets, and deploying higher-powered, ATC-enhanced new satellites. Such efficiencies will, as the Commission has recognized in other recent transactions involving the merger of satellite operators, allow for "greater redundancy" and permit SkyTerra and Inmarsat to "maximize back-up capabilities" by repositioning their

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[60] *See generally MSS Flexibility R&O 2003*, 18 FCC Rcd at 1976.
[61] *MSS Flexibility Order 2005*, 20 FCC Rcd at 4619.
[62] *Id.*
[63] *MSS Flexibility R&O 2003*, 18 FCC Rcd at 1977.

fleets.[64] In addition to providing such enhanced back-up capabilities, unified management of the parties' satellites would eliminate unnecessary investment in duplicative infrastructure and ensure that their future satellite launches will support both parties' most innovative technologies, including an integrated MSS-ATC network.

(2) Administrative, R&D, and Other Cost Savings

The Commission has recognized that mergers can facilitate an increased ability to conduct research and development ("R&D"), and this will be true here.[65] Because the returns on investment in telecommunications innovations have positive economies of scale, the merged firm will be able to justify R&D that would not have been profitable for a smaller entity, for the same reasons recently found by the Commission to hold for the SBC/AT&T merger.[66] Here, the proposed transaction will enhance R&D activities and innovation, allowing the parties to expand and improve their current product offering. The public benefits associated with SkyTerra's and Inmarsat's enhanced R&D will be particularly significant given the importance of deploying ATC and other new mobile satellite high speed data and other advanced technologies.

The Commission also has recognized that the "elimination of duplicative or redundant administrative functions" is cognizable as a merger-specific efficiency.[67] Although difficult to quantify with precision at this early stage, significant savings should result through the consolidation and elimination of unnecessary administrative duplication, in areas such as

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[64] *See generally PanAmSat/Intelsat Merger Order*, 21 FCC Rcd at 7390.
[65] *E.g., SBC/AT&T Merger Order*, 20 FCC Rcd at 18388-18389.
[66] *Id*.
[67] *In re Application of Ameritech Corp., Transferee and SBC Communications Inc., Transferor, for the Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95 and 101 of the Commission's Rules*, Memorandum Opinion and Order, 14 FCC Rcd 14712, 17850 (1999).

customer service and billing, IT services, sales and marketing, and other administrative functions.

D. Existing Services

As much as new advances in services and technology are emphasized, it should also be made clear that, should the transfer of control of Inmarsat occur, the applicants plan to maintain Inmarsat's commitments to Global Maritime Distress Safety System ("GMDSS") services as currently specified in the Public Services Agreement between IMSO and Inmarsat and the continued evolution and enhancement of these services. The parties make a similar commitment as to Ship Security Alert System ("SSAS"), Long Range Identification and Tracking ("LRIT"), as well as Aeronautical Mobile Satellite Route Service ("AMS(R)S") and other aeronautical safety services.[68] Further, they commit to continuing to provide reliable quality mobile satellite services to the U.S. government and the public at large.

More generally, the more efficient use of the L-band will make the combined SkyTerra and Inmarsat better able to offer and make technologically more advanced traditional MSS business and governmental communications products, while at the same time introducing MSS-ATC services. That is because, by optimizing the use of the total spectrum and orbital resources that SkyTerra and Inmarsat together would have available to their combined operation, they would have greater resources, effectively more usable spectrum, than the two would have as separately operated entities.

[68] SkyTerra will also continue to abide by the protections it committed to in its ATC license application for Radio Navigation Satellite Service ("RNSS") protection.

VI. THIS TRANSACTION WILL NOT HARM COMPETITION

A. The Commission's Method of Analysis: Identify Where the Parties Compete and Analyze Whether the Combination Would Adversely Affect That Competition

The Commission analyzes the competitive effects of mergers of satellite operators by examining the services provided by each and the markets in which they operate. The Commission then determines whether the merger would adversely affect competition in the provision of those services in markets served by both parties.[69] As the Commission has explained in previous orders granting mergers, the relevant market concept is used to identify the product and geographic markets in which the competitive implications of the transaction must be assessed.[70]

The Commission begins its analysis by identifying the services sold by each of the merging parties to various types of consumers.[71] It considers the capability or functionality of those services, and seeks to identify other services viewed by customers as being close substitutes or "reasonably interchangeable, even if not identical, for the same purposes."[72] The goal is to identify "the smallest group of competing products for which a hypothetical monopoly provider would profitably impose at least a 'small but significant and non-transitory' increase in price."[73]

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[69] *PanAmSat/Intelsat Merger Ord*er, 21 FCC Rcd at 7383 (competitive effects analysis "begin[s] by defining the relevant markets"); s*ee generally Motient/SkyTerra Application*, 21 FCC Rcd at 10209; *In the Matter of Annual Report and Analysis of Competitive Market Conditions with Respect to Domestic and International Satellite Communications Services*, 22 FCC Rcd 5954 (2007) ("*FSS Annual Report*").

[70] *PanAmSat/Intelsat Merger Order*, 21 FCC Rcd at 7383 and n.83.

[71] *See generally PanAmSat/Intelsat Merger Order*, 21 FCC Rcd at 7382-7386 (citing the Merger Guidelines, §§ 1.11 and 1.12).

[72] *FSS Annual Report*, 22 FCC Rcd at 5964; s*ee generally PanAmSat/Intelsat Merger Order*, 21 FCC Rcd at 7385-7389.

[73] *PanAmSat/Intelsat Merger Order*, 21 FCC Rcd at n. 83 (citing the Merger Guidelines §§ 1.11 and 1.12).

With respect to markets for satellite communications services, the Commission has concluded that customers take a broad view of what applications are close substitutes or reasonably interchangeable.[74] Intermodal competition is "consistent with customary descriptions of relevant markets" because market definition turns on the question of substitutability.[75] As the Commission explained in the FSS Annual Report, "[i]t is not uncommon for the same service . . . to be provided by differing platforms . . . [that] afford consumers substantially the same capability."[76] Indeed, in evaluating that transaction, the Commission concluded that the merging providers competed not only across spectrum bands (*i.e.*, including Ku-, C- and other satellite bands) but also across technology platforms.[77]

More recently, in the *Stratos-Trust Order*, the Commission confirmed that Inmarsat operates in a vibrantly competitive environment.[78] Viewing the competitive landscape broadly to encompass providers of capacity for international mobile satellite services, the Commission emphasized the extensive competition faced by Inmarsat specifically and, more generally, concluded that "'commercial communications satellite services are subject to effective competition.'"[79]

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[74] *FSS Annual Report*, 22 FCC Rcd at 5964-5965.
[75] *Id.* at 5966.
[76] *Id.*
[77] *See PanAmSat/Intelsat Merger Order*, 21 FCC Rcd at 7384-7389; *see also FSS Annual Report*, 22 FCC Rcd at 5966-5972 (identifying relevant markets by particular service or application, and identifying market participants including competitors using FSS, MSS or terrestrial wireless technologies).
[78] *In the Matter of Stratos Global Corporation, transferor, Robert M. Franklin, transferee; Consolidated Application for Consent to Transfer of Control,* Memorandum Order and Declaratory Ruling, *22 FCC Rcd 21328, 21355-56 (2007)* ("*Stratos-Trust Order")* (quoting *Annual Report and Analysis of Competitive Market Conditions with Respect to Domestic and International Satellite Communications Services,* 22 FCC Rcd 5954 (2007) ("*Satellite Competition Report*")).
[79] *Stratos-Trust Order*, 22 FCC Rcd at n.197 (quoting *Satellite Competition Report*, 22 FCC Rcd at 6011, ¶ 188).

B. Current MSS Services: The Few Areas of Overlap Are Characterized By Thriving Competition That Will Not Be Adversely Affected By the Proposed Transaction

Applying that analysis here demonstrates that the combination of SkyTerra and Inmarsat will not adversely affect competition for any mobile satellite services, whether analyzed broadly per the *Stratos-Trust Order* as "international mobile satellite services" or more narrowly based on specific applications. The following discussion demonstrates that SkyTerra and Inmarsat in significant part offer different services targeted at different customer segments. And where there is apparent overlap, it is clear that they are not close competitors but are relatively small players facing vibrant competition from numerous other providers.

Turning first to the big picture, it is indisputable that not only are mobile satellite services "subject to effective competition,"[80] but that that marketplace is an extremely dynamic one in which competitive intensity is increasing. As the Commission is well aware, new players are entering, including ICO and TerreStar as well as additional VSAT providers. Not only did ICO and Inmarsat just complete successful launches of new spacecraft, but three other firms are building and set to launch new satellites within the next two years. New products and services are being introduced, such as Iridium's Open Port maritime service. And then of course there is new technology at various levels, ranging from smaller, more portable VSAT antennae to the game-changer of multiple players introducing MSS-ATC. Taken together, and recognizing that significant capital and technical development still is required, the Commission easily can find that this transaction will have no adverse effect on such vibrant competition.

Then delving more specifically into the parties' offerings, Inmarsat is a global provider of MSS with a majority of its reported 2007 revenue from maritime and aeronautical services.

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[80] *Id.*

Inmarsat also provides bulk capacity, with much of its bulk capacity revenue generated by the U.S. Navy, again for maritime communications. In addition, Inmarsat provides significant global service in aeronautical and land mobile high-speed data applications.

By contrast, SkyTerra operates primarily in North America,[81] including surrounding coastal waters, where it currently provides only narrowband land mobile services, including voice, packet data and private network services. SkyTerra does not provide trans-oceanic maritime services, nor do its services include comparable aeronautical[82] or high-speed data services. Thus, in primary segments served by Inmarsat, SkyTerra is not even a participant.

While SkyTerra and Inmarsat both support land-mobile services in North America, they generally focus on different applications and operate in a highly competitive marketplace. For example, SkyTerra's voice service is enhanced by a push-to-talk feature for dispatch communications among multiple users, which Inmarsat does not offer. As noted, SkyTerra terminals support only low data speeds of 4.8 Kbps, suitable for faxes and text messages.

Inmarsat's principal current-generation land-mobile service in North America is "Broadband Global Area Network," or "BGAN," a high speed data service offering speeds up to 492 Kbps. BGAN is designed for internet access, multimedia file sharing, video broadcasting, and high speed private network access in remote locations. While BGAN also supports voice service, such voice service is ancillary to the high speed data applications.

With respect to satellite high speed data services for this application, Inmarsat competes, not with SkyTerra which has no comparable offering, but with VSAT providers, like ViaSat, Gilat, and Hughes, which provide users with over 1 Mbps on a mobile or transportable platform.

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[81] SkyTerra also provides limited service in northern South America, Central America, the Caribbean and Hawaii.
[82] SkyTerra understands that a very few aeronautical units in North America may be served by its private network service customers.

VSAT terminals have become small enough and portable enough to be substitutes for many customers, including for media coverage customers. That competition is increasing as the size of VSAT antennas continues to shrink, and as VSAT providers bundle capacity from multiple FSS operators to provide multi-regional service. [83]

SkyTerra and Inmarsat both serve land-mobile fleet management/asset tracking services, but here too their competitive presence in North America is relatively modest in a highly competitive segment that includes Qualcomm, Orbcomm, Iridium and Globalstar. Qualcomm, which provides its OmniTracs asset tracking/fleet management service over leased Ku-band transponders, and Orbcomm, which provides asset tracking/fleet management services on a wholesale basis over its LEO satellite constellation, are the two leading firms. Together, Orbcomm and FSS providers account for well more than half of the wholesale revenues from these services and asset tracking/fleet management terminals currently in use in North America. In addition, both Iridium and Globalstar have been aggressively pursuing SkyTerra's customers. For example, Iridium recently signed an agreement with EMS Satcom, one of SkyTerra's service providers, to develop a new asset tracking/fleet management terminal over Iridium's network.

Consequently, this transaction will not adversely impact the vigorous competition for satellite-based voice, fleet management/asset tracking and other data services among numerous service providers and satellite operators. The companies identified above, as well as terrestrial wireless providers, will continue to provide consumers with a wide range of options for such

[83] Most transportable VSAT systems feature Ku-band antennas as small as .75 meters in diameter that are capable of being either transported in or mounted to the roof of a light truck or van for rapid deployment. A more advanced antenna system, the Raysat StealthRay 2000, is a low-profile, vehicle roof-mounted Ku-band antenna that measures only 5.9 inches high, 45.3 inches long, and 35.4 wide, allowing for mobile VSAT systems to be mounted on smaller vehicles such as SUVs. *See* Raysat Antenna Systems, Product Overview of the StealthRay 2000 (December 2006), *available at* http://www.raasys.com/webdata/SupportDocuments/61/StealthRay%202000%20Specs.pdf. The Commission recently authorized Raysat Antenna Systems to operate a network providing broadband data communications over the Ku-band to approximately 400 vehicle-mounted antennas. *See In the Matter of Raysat Antenna Systems, LLC*, Order and Authorization, 23 FCC Rcd 1985 (2008).

services.[84] Similarly as to private network capacity, there is a wide range of providers including Iridium, Globalstar, Orbcomm and FSS operators.

In sum, with respect to those applications where SkyTerra and Inmarsat offer similar services, comparable and substitutable services are offered by numerous other operators in either MSS or other spectrum bands (*i.e.*, Ku-, C- and VHF and UHF bands). In this regard, MSS providers are facing increasing competition from FSS operators. As noted above, smaller antennas and advanced technology are increasingly used by FSS/VSAT services to support vehicle mounted services. Announcements of new services, based upon the use of other MSS and FSS satellites, are reported almost weekly.[85] Existing and new services coming on line will only increase competition with the North American asset tracking and other land mobile services

[84] For example, companies like Numerex, Jasper Wireless and Aeris Communications all provide asset tracking services similar to those provided by Qualcomm, Orbcomm, and others by using GSM and CDMA wireless networks together with GPS. *See* Product information on the Numerex Network, *available at* http://www.numerex.com/M2M-Solutions/Numerex-Networx.aspx; product information sheet on the Jasper Wireless Network, *available at* http://www.jasperwireless.com/services.php; and product information on the Aeris network system, *available at* http://www.aeris.net/m2m_services.html. Numerex offers asset tracking over both terrestrial wireless and satellite networks, using Globalstar's Simplex service for the satellite component. *See* http://www.numerex.com/M2M-Solutions/Numerex-Networx.aspx (describing satellite services through Orbit-One division); http://www.orbit-one.com/PDF/GSP-Simplex%20Coverage.pdf (showing coverage map for services offered by Numerex's Orbit-One division).

[85] *See, e.g.*, *VT iDirect Helps with Panasonic's Fly High Broadband*, Satnews *Daily* (Jul. 9, 2008) (representing a nexgen in-flight broadband solution over Intelsat's global Ku-band system); *Insight… The Times, They Are A Changin'… FAST!* SatMagazine.com (Jul. 2008) (covering mobile solutions offered by Thuraya, Intelsat, and SES Global); *Alaska Airlines and Southwest Airlines Support Row 44's Application*, Communications Daily at 12 (Jul. 2, 2008) (proposing use of Ku-band capacity from Horizons I, AMC 2 and AMC 9 to provide in-flight broadband service); *SingTel Signs SES New Skies Capacity Deal*, Satellite Today (Jun. 18, 2008) (extending suite of maritime VSAT solutions over New Skies' NSS-7, NSS-703, and NSS-5 satellites); *Transforming Satellite Broadband*, SatMagazine.com (Jun. 2008) (discussing significant increases in satellite broadband capacity); *Iridium and Vizada Supply a Boat Load of Solutions*, Satnews Daily (Jun. 5, 2008) (describing different OpenPort applications over Iridium's network for shipping and fishing fleets around the world); *Iridium Sees Strong Growth in Maritime Business*, Satellite Today (Jun. 4, 2008) (citing double-digit growth in subscriptions and usage in the active maritime sector); *Satlynx Launches New Set of Maritime Services*, Satellite Today (Jun. 2, 2008) (representing a new set of maritime VSAT services across its Ku-, extended Ku-, and C-band platforms); *Land Comm Mobility Aided by Explorer 727*, Satnews Daily (May 22, 2008) (featuring new mobile high speed data terminals over Inmarsat system with data speeds approaching 432 kbps); *Intelsat, Panasonic Partner for Airline Broadband Service*, Satellite Today (May 6, 2008) (leveraging Intelsat's GlobalConnex Network Broadband Service for on-demand mobile communications); *SpeedCast CEO Confident of Strong Early Take-up for Maritime Service*, Satellite News (Apr. 7, 2008) (expanding service to 100 ships with new global maritime broadband service over AsiaSat and Eutelsat); *Thuraya Expands Maritime Product Distribution*, Satellite Today (Mar. 24, 2008) (initiating ThurayaMarine solution for small- and medium-sized sea vessels to boost revenues in maritime arena over Thuraya-3 satellite).

offered by SkyTerra and Inmarsat. Their existence, coupled with the limited presence of SkyTerra and Inmarsat in these applications, makes it clear that the combination of SkyTerra and Inmarsat will have no adverse effect on competition or pricing for these products.

C. Future Directions

Beyond current service offerings, as described above, SkyTerra's next generation business plan is to develop a voice and broadband data service over its planned integrated MSS-ATC network, focused on a handheld phone comparable in size to a cell phone or PDA and other devices attractive to mass market consumers. By contrast, Inmarsat's announced business plan is to continue to provide traditional and advanced satellite-based services, of the sort targeted primarily to serve commercial customers.[86] Its stated focus remains on maritime, aeronautical, and land mobile applications with features that would not make them close substitutes for SkyTerra's integrated satellite-ATC network. More specifically, neither Inmarsat's BGAN nor its satellite phone service would be a close substitute for SkyTerra's planned mass-market MSS-ATC service: BGAN is not a handheld service, and the Inmarsat satellite phone service requires a larger handset and will not work nearly as effectively as an MSS-ATC offering, if at all, in dense urban areas.

SkyTerra's MSS-ATC service will instead face competition from the three other satellite operators who are pursuing MSS-ATC, as well as from terrestrial wireless providers. The satellite operators planning on developing ATC networks that would compete with SkyTerra include. Globalstar which already holds an authorization to provide ATC; ICO which recently

[86] *See* Inmarsat plc, 2007 Annual Report at 6.

launched a new satellite and holds an authorization to provide ATC; and TerreStar,[87] which has a satellite under construction and has an application for an ATC authorization pending before the Commission. As prices of such services are reduced, they are anticipated to be competitive with terrestrial wireless services, with each acting as a competitive constraint on the other service.

By contrast, Inmarsat has not pursued ATC on its satellite network. First, Inmarsat does not have a license to construct an ATC network, nor has it applied for one. Second, Inmarsat's fleet, including a number of recently launched satellites, is not designed with sufficiently large antennae or with the ability to concentrate satellite signal power over sufficiently small land areas to provide services to wireless handsets the size of conventional cell phones, an essential feature for mass market appeal.

In short, Inmarsat and SkyTerra not only face vibrant competition from numerous other providers today, indeed more competition from other players than they do from each other, but they will continue to do so in the future. Thus, a combination of Inmarsat and SkyTerra will not adversely affect competition.

D. Department of Justice Determination

The stance taken by the U.S Department of Justice further demonstrates that combining Inmarsat and SkyTerra will not adversely affect competition. As stated above, on September 22, 2008, the 30 day Hart-Scott-Rodino waiting period for the Inmarsat transaction expired without any action from the U.S. Department of Justice's Antitrust Division; no second request was issued.

[87] As noted in Section II.A (3) of this Narrative, Harbinger has a minority, non-controlling interest in TerreStar. TerreStar does and would continue to operate independently of SkyTerra and Inmarsat.

VII. PROCEDURAL MATTERS

A. Pending Applications and Petitions

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

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

The applicants request that the Commission designate the *ex parte* status of the transfer of control application proceedings as "permit-but-disclose" under the Commission's rules. *See* 47 C.F.R. §§ 1.1200 *et seq*. Doing so will facilitate the development of a complete record and is consistent with Commission decisions in other similar transactions.[88]

VIII. CONCLUSION

For the foregoing reasons, Commission consent to the transfer of control of Inmarsat Hawaii Inc. and Inmarsat, Inc. to Harbinger is hereby requested.

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

Attachment A – List of Licenses

Approval is requested for the transfer of control of the following licenses and authorizations held by subsidiaries of Inmarsat plc.:

Licenses Held by Inmarsat:

Licensee	**Authorization**[1]
	Special Temporary Authority (Earth Station)
Inmarsat Hawaii Inc.	KA25
	E080059
	Experimental License
Inmarsat, Inc.	WD2XWM

[1] All satellite earth station operations will be pursuant to special temporary authority until consent to transfer control of associated earth station licenses has been obtained.

ATTACHMENT B

PETITION FOR DECLARATORY RULING

Introduction and Summary

This petition for declaratory ruling ("PDR")[1] accompanies applications seeking the Commission's consent to transfer control of SkyTerra Subsidiary LLC ("SkyTerra Sub") from SkyTerra Communications, Inc. ("SkyTerra") to Harbinger Capital Partners Master Fund I, Ltd. ("Master Fund") and Harbinger Capital Partners Special Situations Fund, L.P. ("Special Situations Fund") (collectively referred to as "Harbinger" or the "Harbinger Funds").[2] The parties to the applications respectfully request a declaratory ruling from the Commission, pursuant to Section 310(b)(4) of the Communications Act of 1934, as amended, that it is consistent with the public interest for Harbinger and any commonly-controlled funds[3] to own, directly or indirectly, up to 100% of the issued and outstanding stock of SkyTerra, which has a controlling interest in SkyTerra Sub.[4]

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

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

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

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

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

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

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

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

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

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

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

[7] *See* ISP-PDR-20080129-00002.

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

- Annex 1 provides information concerning the citizenship of investors in the Harbinger Funds.
- Annex 2 provides principal place of business showings.
- Annex 3 consists of diagrams depicting the ownership of the Harbinger Funds.
- Annex 4 describes the control that Harbinger's management has over sales of interests in the Master Fund and the Special Situations Fund so that management can monitor and enforce continuing compliance with Section 310(b).
- Annex 5 depicts the ownership structure of SkyTerra Sub that is proposed in the transfer of control applications.
- Annex 6 depicts the foreign ownership of SkyTerra by the Master Fund, the Special Situations Fund, Harbinger Capital Partners Fund I, L.P. ("Partners Fund"), TerreStar Corporation, Well Fargo Bank, National Association ("Wells Fargo"), and various Apollo funds.
- Appendix 1 identifies the interests in SkyTerra held by the Master Fund, the Special Situations Fund, and the Partners Fund.
- Appendix 2 identifies the interests in SkyTerra that Harbinger has agreed to purchase but that are being held in escrow pending action on the application seeking the Commission's consent to transfer control of SkyTerra Sub to Harbinger. These shares were placed in escrow in connection with: (1) Harbinger's acquisition of SkyTerra shares in April 2008 from various Apollo funds[8]; (2) Harbinger's acquisition of SkyTerra shares in September

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

2008 from TerreStar Corporation[9]; and (3) Wells Fargo's acquisition of SkyTerra shares in January and February 2009.[10]

Legal Standard

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

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

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

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

[11] *See Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, Report and Order and Order on Reconsideration, FCC 97-398, 12 FCC Rcd 23891, 23896 ¶ 9, 23913 ¶ 50, and 23940 ¶¶ 111-112 (1997) ("*Foreign Participation Order*"), Order on Reconsideration, FCC 00-339, 15 FCC Rcd 18158 (2000).

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

Ownership of Harbinger Funds

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

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

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

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

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

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

Control of Harbinger Funds

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

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

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

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

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

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

Principal Places of Business

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

Conclusion

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

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

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

Harbinger Capital Partners Offshore Fund I, Ltd.		
Category of Investor	*Aggregate % Equity*	*Country of Citizenship/Country of Organization/Principal Place of Business of Beneficial Owner of Equity Interest*
Individuals that are citizens of the United States	0.03%	United States
Individuals that are citizens of foreign countries	0.06%	Canada, South Africa, United Kingdom
Banks, insurance companies, pension plans and foundations/endowments organized in the United States and controlled by U.S. citizens	3.25%	United States
Banks, insurance companies, pension plans and foundations/endowments controlled by foreign citizens or organized in foreign countries	4.53%	Cayman Islands, Isle of Man, Luxembourg, The Netherlands, United Kingdom
Private equity and mutual funds that are organized in the United States and have their principal place of business in the U.S.	0.0%	United States
Private equity and mutual funds that are organized in a foreign country or have their principal place of business in a foreign country	0.0%	
Any investors that do not fall into one of the foregoing categories that are organized in the United States and have their principal place of business in the U.S.	2.00%	United States
Any investors that do not fall into one of the foregoing categories that are organized in a foreign country or have their principal place of business in a foreign country	90.13%	Australia, United Kingdom, Norway, The Netherlands, Ireland, Channel Islands, British Virgin Islands, Switzerland, Sweden, Singapore, Portugal, Panama, Norway, Netherlands Antilles, Luxembourg, Japan, Italy, Isle of Man, France, China, Cayman Islands, Canada, Bermuda, the Bahamas

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

Harbinger Capital Partners Fund I, L.P.		
Category of Investor	*Aggregate % Equity*	*Country of Citizenship/Country of Organization/Principal Place of Business of Beneficial Owner of Equity Interest*
Individuals that are citizens of the United States	4.46%	United States
Individuals that are citizens of foreign countries	0.0%	
Banks, insurance companies, pension plans and foundations/endowments organized in the United States and controlled by U.S. citizens	8.86%	United States
Banks, insurance companies, pension plans and foundations/endowments controlled by foreign citizens or organized in foreign countries	0.0%	
Private equity and mutual funds that are organized in the United States and have their principal place of business in the U.S.	0.0%	United States
Private equity and mutual funds that are organized in a foreign country or have their principal place of business in a foreign country	0.0%	
Any investors that do not fall into one of the foregoing categories that are organized in the United States and have their principal place of business in the U.S.	86.68%	United States
Any investors that do not fall into one of the foregoing categories that are organized in a foreign country or have their principal place of business in a foreign country	0.0%	

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

Harbinger Capital Partners Special Situations Fund, L.P.		
Category of Investor	*Aggregate % Equity*	*Country of Citizenship/Country of Organization/Principal Place of Business of Beneficial Owner of Equity Interest*
Individuals that are citizens of the United States	3.39%	United States
Individuals that are citizens of foreign countries	0.0%	
Banks, insurance companies, pension plans and foundations/endowments organized in the United States and controlled by U.S. citizens	4.09%	United States
Banks, insurance companies, pension plans and foundations/endowments controlled by foreign citizens or organized in foreign countries	0.0%	
Private equity and mutual funds that are organized in the United States and have their principal place of business in the U.S.	0.0%	United States
Private equity and mutual funds that are organized in a foreign country or have their principal place of business in a foreign country	0.0%	
Any investors that do not fall into one of the foregoing categories that are organized in the United States and have their principal place of business in the U.S.	29.25%	United States
Any investors that do not fall into one of the foregoing categories that are organized in a foreign country or have their principal place of business in a foreign country	63.27%	Cayman Islands[1]

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

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

Harbinger Capital Partners Special Situations Offshore Fund, L.P.		
Category of Investor	*Aggregate % Equity*	*Country of Citizenship/Country of Organization/Principal Place of Business of Beneficial Owner of Equity Interest*
Individuals that are citizens of the United States	0.10%	United States
Individuals that are citizens of foreign countries	0.0%	
Banks, insurance companies, pension plans and foundations/endowments organized in the United States and controlled by U.S. citizens	12.21%	United States
Banks, insurance companies, pension plans and foundations/endowments controlled by foreign citizens or organized in foreign countries	3.38%	Netherlands
Private equity and mutual funds that are organized in the United States and have their principal place of business in the U.S.	0.0%	United States
Private equity and mutual funds that are organized in a foreign country or have their principal place of business in a foreign country	0.0%	
Any investors that do not fall into one of the foregoing categories that are organized in the United States and have their principal place of business in the U.S.	3.40%	United States
Any investors that do not fall into one of the foregoing categories that are organized in a foreign country or have their principal place of business in a foreign country	80.91%	Channel Islands, The Netherlands, Canada, Cayman Islands, Finland, Germany, Ireland, Liechtenstein, Luxembourg, Norway, Panama, Switzerland, British Virgin Islands

Annex 2 to Petition for Declaratory Ruling:
PRINCIPAL PLACE OF BUSINESS SHOWINGS

Harbinger Capital Partners Master Fund I, Ltd.

(i) Country of organization:
CAYMAN ISLANDS

(ii) Citizenship of investment principals, officers and directors:
UNITED STATES, IRELAND, UNITED KINGDOM

(iii) Location of world headquarters:
IRELAND

(iv) Location of tangible properties:
N/A

(v) Location of greatest sales and/or revenues:
N/A

Harbinger Capital Partners Special Situations Fund, L.P.

(i) Country of organization:
UNITED STATES

(ii) Citizenship of investment principals, officers and directors:
UNITED STATES

(iii) Location of world headquarters:
UNITED STATES

(iv) Location of tangible properties:
N/A

(v) Location of greatest sales and/or revenues:
N/A

Harbinger Capital Partners Offshore Fund I, Ltd.

(i) Country of organization:
CAYMAN ISLANDS

(ii) Citizenship of investment principals, officers and directors:
UNITED STATES, IRELAND, UNITED KINGDOM

(iii) Location of world headquarters:
IRELAND

(iv) Location of tangible properties:
N/A

(v) Location of greatest sales and/or revenues:
N/A

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

(i) Country of organization:
CAYMAN ISLANDS

(ii) Citizenship of investment principals, officers and directors:
UNITED STATES

(iii) Location of world headquarters:
IRELAND

(iv) Location of tangible properties:
N/A

(v) Location of greatest sales and/or revenues:
N/A

Harbinger Capital Partners SSF CFF, Ltd.

(i) Country of organization:
CAYMAN ISLANDS

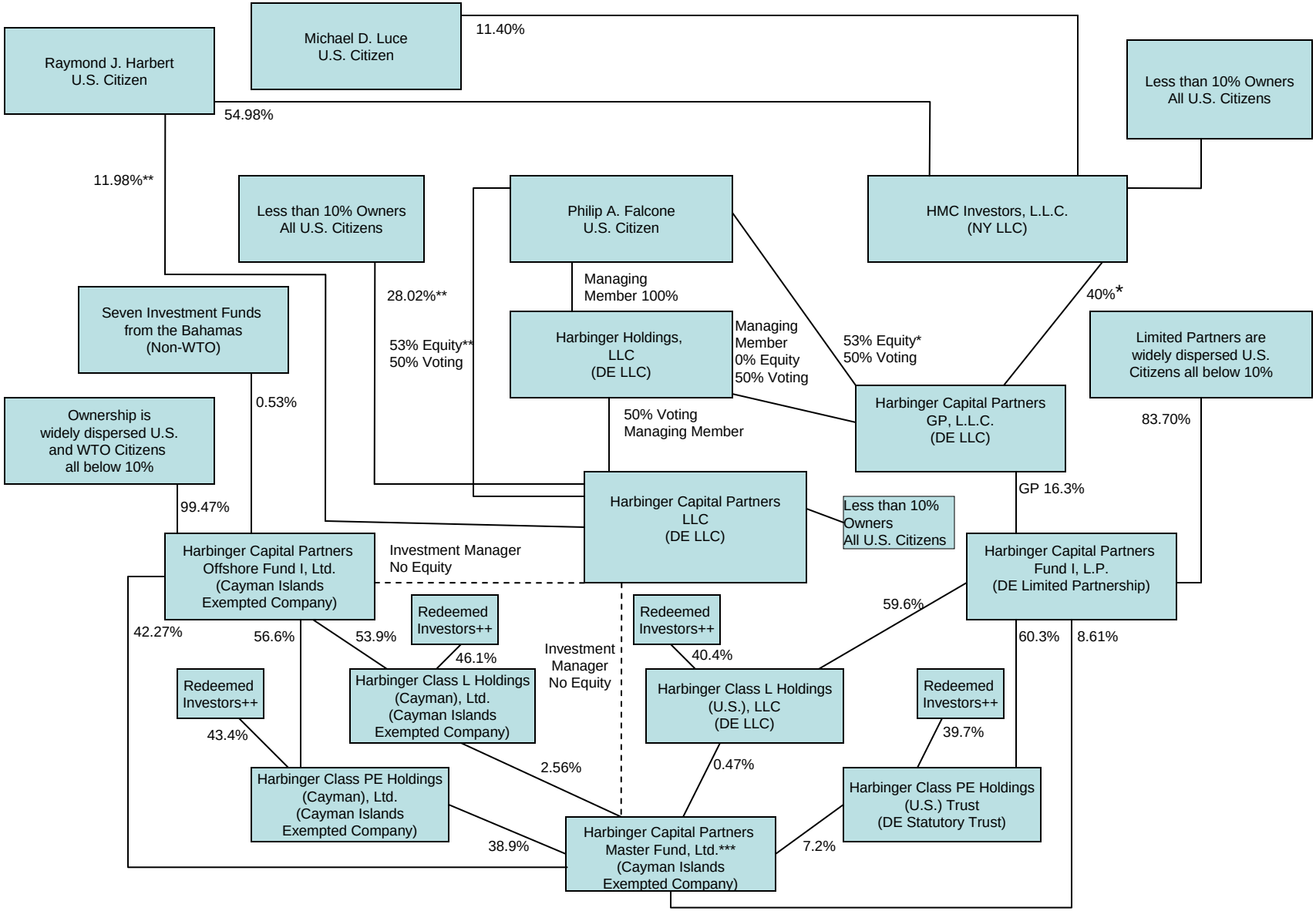
(ii) Citizenship of investment principals, officers and directors:
UNITED STATES, IRELAND, UNITED KINGDOM

(iii) Location of world headquarters:
IRELAND

(iv) Location of tangible properties:
N/A

(v) Location of greatest sales and/or revenues:
N/A

Annex 3 MASTER FUND OWNERSHIP DIAGRAM



(footnotes from previous page)

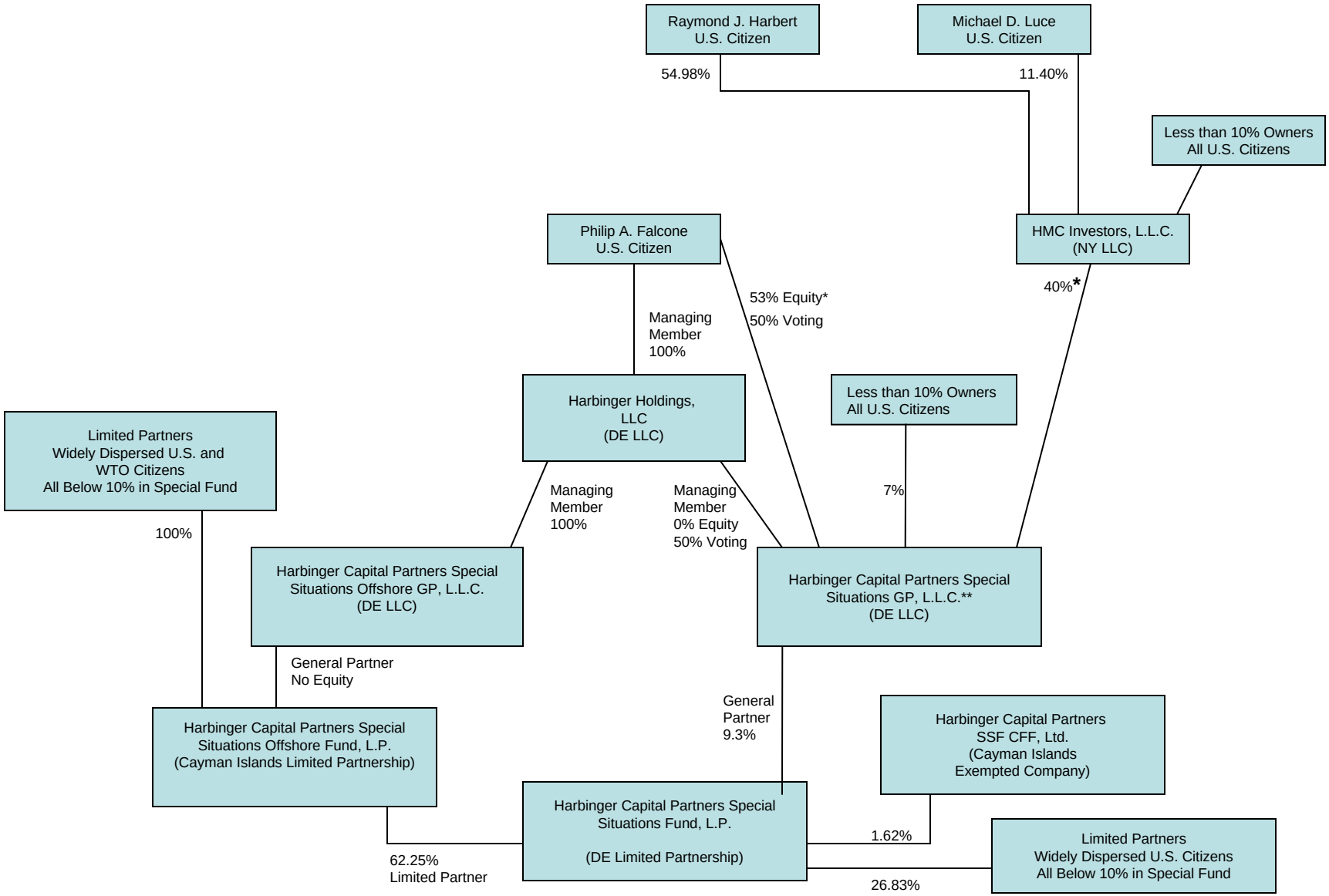
* In 2009 and 2010, as the asset value and performance returns of the fund increase, Philip A. Falcone's equity percentage increases and HMC Investors, L.L.C.'s equity percentage decreases. In 2011, Philip A. Falcone's equity percentage will be 73% and HMC Investors, L.L.C.'s equity percentage will be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

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

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

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

Annex 3 SPECIAL SITUATIONS FUND OWNERSHIP DIAGRAM



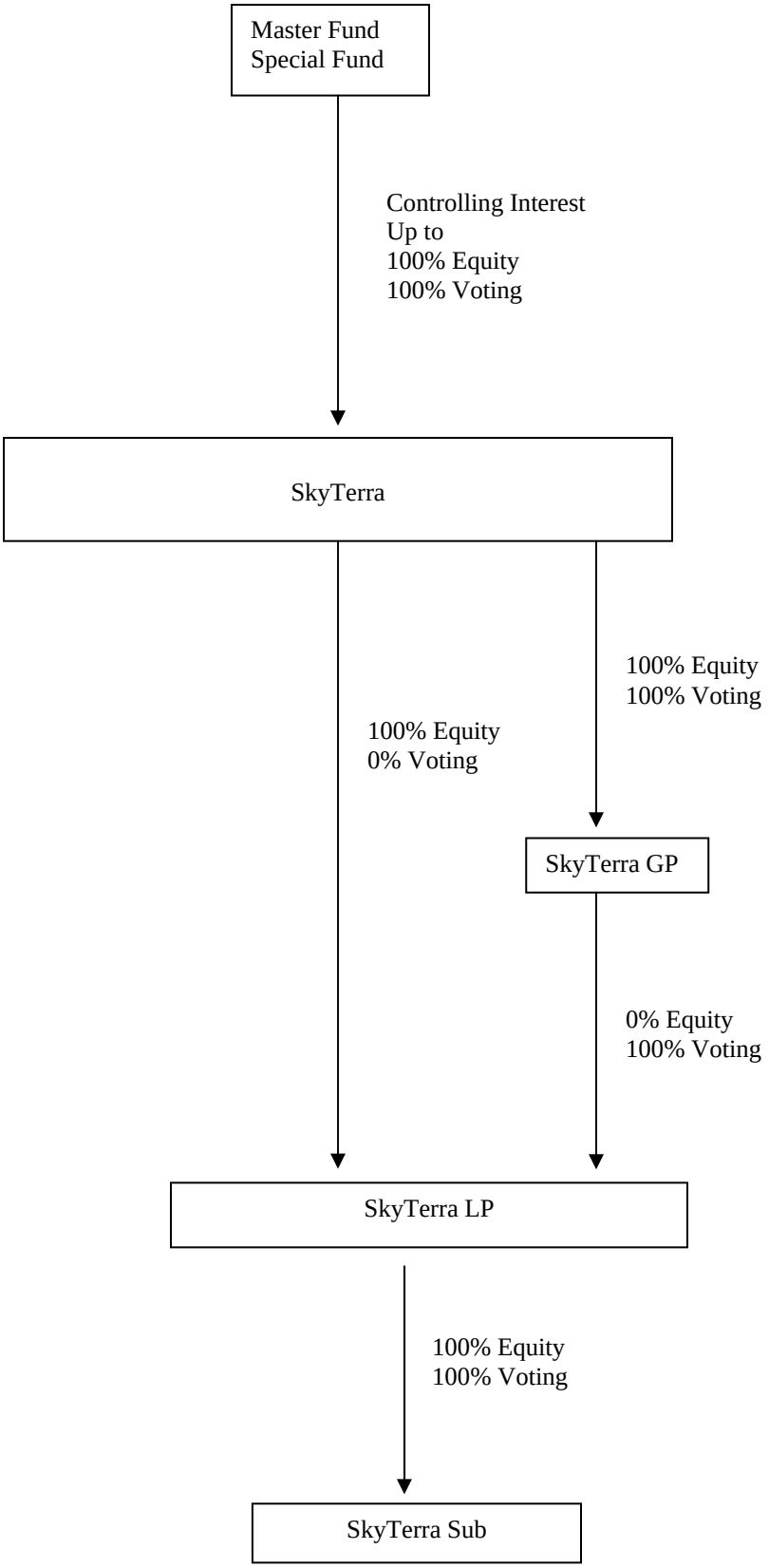
* In 2009 and 2010, as the asset value and performance returns of the fund increase, Philip A. Falcone's equity percentage increases and HMC Investors, L.L.C.'s equity percentage decreases. In 2011, Philip A. Falcone's equity percentage will be 73% and HMC Investors, L.L.C.'s equity percentage will be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

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

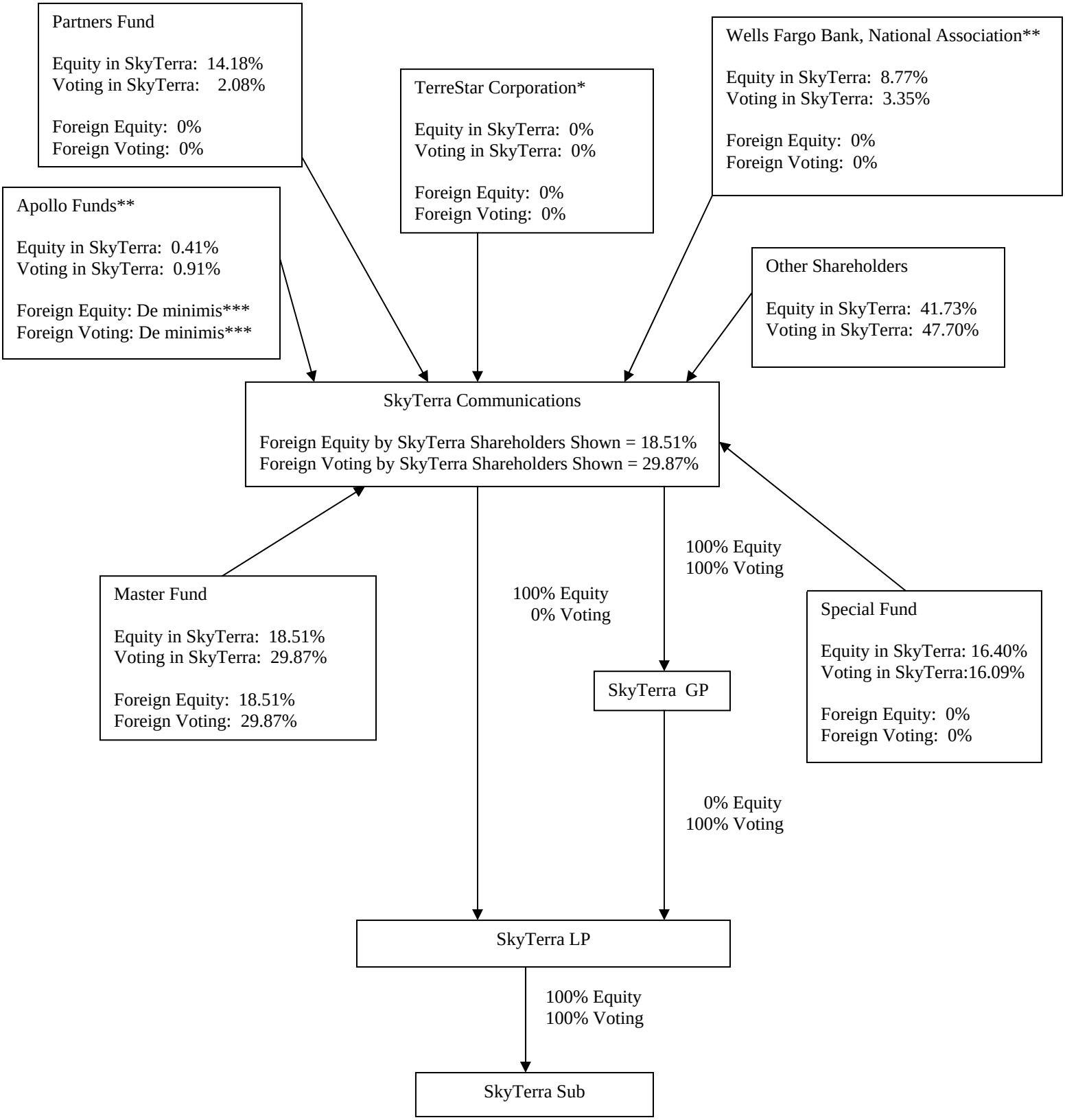
Annex 4 to Petition for Declaratory Ruling:
SALE RESTRICTIONS

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

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



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



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* Through Motient Venture Holdings.

** Shares held in escrow.

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

Appendix 1

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

Appendix 2

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

Attachment C – U.K. Panel Case

Lyonnaise des Eaux for the Northumbrian Water Group

RIS *from* Perfect Information Ltd

Number :	5610F	Date :	06/03/95 07:34:02
Company :	Northumbrian Water	Time :	07:34:02

Cash Offer by Lyonnaise
RNS No 5610F
NORTHUMBRIAN WATER GROUP PLC
6th March 1995

NOT FOR RELEASE, PUBLICATION OR DISTRIBUTION IN OR INTO
THE UNITED STATES OF AMERICA, CANADA OR AUSTRALIA

LYONNAISE DES EAUX S.A. ("LYONNAISE")
PROPOSED CASH OFFER
FOR
NORTHUMBRIAN WATER GROUP PLC ("NORTHUMBRIAN")

SUMMARY

* Proposed cash offer for Northumbrian by Lyonnaise, a leading international water services group, on terms to be announced following satisfactory outcome of regulatory review

* The merger of two north east based water companies with a clear geographical and commercial fit creating opportunities for improved efficiencies and resultant benefits for customers and the region

* Creation of a major industrial force based in the north east managing the provision of water services to a population of some 4.2 million over an area of 11,800 square kilometres

* Opportunities, through the combination of the international expertise and resources of the two groups, for co-operation on international projects and in consultancy and waste management

Commenting on the proposed offer, Philippe Brongniart, Executive Vice-President of Lyonnaise said:

"We have been investing successfully in the north east for the benefit of our customers for over six years and are proud of our reputation for customer service. Northumbrian and North East Water already work together in a number of areas and we strongly believe that merging our UK water interests with Northumbrian will strengthen both businesses, providing further benefits for customers.

"The proposed offer is a natural strategic development in one of our core areas of activity. The enlarged UK water businesses will represent a substantial and prominent part of our international water activities and will enhance our ability to meet a greater variety of customer needs."

THE PROPOSED OFFER

Lyonnaise today announces its intention to make a cash offer ("the Proposed Offer") for the whole of the issued share capital of Northumbrian.

Lyonnaise anticipates that the Proposed Offer will be referred to the Monopolies and Mergers Commission ("MMC") and therefore it is not the intention of Lyonnaise to announce formal offer terms at this stage.

Lyonnaise intends to merge its existing UK water-related businesses with those of Northumbrian, thereby creating an enlarged group which will consolidate the strengths of each business and offer benefits to customers. Lyonnaise believes that the enlarged group will, with the combined experience of the management of Northumbrian and Lyonnaise, be able to make more effective use of existing water resources and will continue to develop the distribution network to enhance the level of service to customers.

INFORMATION ON THE LYONNAISE GROUP

Lyonnaise

Lyonnaise is a worldwide environmental services and urban development group. Based in the Paris area, it is quoted on the Paris Bourse and has a market capitalisation of approximately FFr 24.6 billion (Â£3.0 billion, at current exchange rates). It has an extensive international presence, operating in Europe, North and South America, Asia, the Pacific Basin and Australia and employed approximately 120,000 staff worldwide as at 31 December 1993.

Lyonnaise is a leading international water services group supplying directly, or through its affiliates, water services to more than 40 million people worldwide of which more than 26 million are outside France.

Lyonnaise has developed its international water activities over a period of some 15 years. The acquisition of four UK water companies in 1988 and 1989 represented a significant step in this development. Lyonnaise has also achieved major successes in winning competitive tenders for some of the largest contracts awarded in the water industry worldwide, including Buenos Aires (1993), Sydney (1993) and Indianapolis (1994).

Further information relating to Lyonnaise is set out by way of Appendix to this announcement.

Lyonnaise's UK water-related businesses

Lyonnaise's principal UK water-related businesses are North East Water plc and Essex and Suffolk Water plc, which together supply a population of approximately 3 million.

* North East Water

  North East Water is the appointed water supplier for the majority of customers in the north east who are not supplied by Northumbrian. It was formed in 1992 following the merger of the Newcastle and Gateshead Water Company and the Sunderland and South Shields Water Company, both of which were acquired in 1989.

* Essex and Suffolk Water

  Essex and Suffolk Water was formed last year following the merger of the Essex Water Company and the Suffolk Water Company, both of which were acquired in 1988.

These mergers were successfully carried out after full consultation with, and the approval of, the Office of Water Services and in each

case involved the merger of the two companies under a single water licence.

For the year ended 31 March 1994, Lyonnaise's UK water-related businesses (including its analytical and consultancy businesses) recorded an aggregated turnover of Â£162.4 million and profit before tax of Â£46.3 million. Aggregated net assets as at 31 March 1994 amounted to Â£137.1 million. Lyonnaise's UK water-related businesses employed some 1,580 staff as at 31 March 1994.

INFORMATION ON NORTHUMBRIAN

Northumbrian is principally engaged in the provision of water supply and sewerage services in the north east of England. Northumbrian supplies water to a population of some 1.2 million throughout the Wear and Teeside areas and parts of Northumberland. Northumbrian also provides sewerage services to a population of approximately 2.5 million in the north east region including almost all of the people to whom North East Water supplies water. Northumbrian is also involved in the supply of raw water to industrial customers, waste management, consultancy and the manufacture and supply of environmental protection equipment.

As at 31 March 1994, Northumbrian employed 3,202 staff. Based on the mid-market share price of 742p at the close of business on 3 March 1995, Northumbrian had a market capitalisation of approximately Â£508 million.

For the year ended 31 March 1994, Northumbrian reported total turnover of Â£298.6 million and profit before tax of Â£62.8 million. Net assets as at 31 March 1994 were Â£772.4 million.

REASONS FOR THE PROPOSED OFFER

Lyonnaise believes that combining Northumbrian with its UK water-related businesses will produce particular benefits for the enlarged group and presents an exceptional opportunity for Northumbrian and its customers. The key benefits of the Proposed Offer are expected to arise as a result of:

* Greater value for money for customers

  There is a clear geographical and commercial fit between Northumbrian and North East Water. In addition to a number of common water sources, North East Water already provides a significant quantity of Northumbrian's treated water needs in Northumberland, whilst Northumbrian provides sewerage services to almost all of North East Water's customers. North East Water and Northumbrian together supply water to a population of some 2.5 million within an area of approximately 9,000 square kilometres, supplying some 800 million litres of treated water per day to customers.

  Subject to the approval of the Office of Water Services, Lyonnaise anticipates that the two companies would be merged under one water licence. Lyonnaise believes that the integration of the two businesses will produce opportunities for improved efficiency which, whilst maintaining levels of service, will lead to lower charges for many customers than those already determined by the Office of Water Services.

* Strong north east based group

  It is Lyonnaise's intention that its enlarged UK water-related businesses, based principally in the north east of England, will be managed through Northumbrian. The enlarged UK group will be a major industrial force in the region and

one of the largest water companies in the UK, providing water services to a population of approximately 4.2 million over an area of some 11,800 square kilometres in both the north east and the Essex and Suffolk areas.

* Overseas expansion

Lyonnaise believes that, with increasing urbanisation and water privatisation around the world, the opportunities for overseas expansion are significant. Lyonnaise's international network and diversity of expertise places it in an excellent position to take advantage of such opportunities. Lyonnaise believes that through a combination of the international expertise and resources of the two groups, Northumbrian will be better able to develop the necessary critical mass to secure and manage international projects in an increasingly competitive market. This should result in increased overseas activities and enhanced career opportunities for Northumbrian employees in this area.

* Establishment of an enlarged international research and development centre

Lyonnaise has made a considerable commitment to the improvement of the services which it offers through investment in research and development and training of employees and management. While giving Northumbrian access to its research, Lyonnaise proposes to establish and fund an enlarged research and development centre within Northumbrian. This will benefit its customers and assist Northumbrian's international business, providing both groups with the technical benefits of an integrated research and development facility.

* Co-operation within consultancy

Northumbrian has a significant international consultancy business. It is Lyonnaise's intention that Northumbrian's consultancy business will assist and support Lyonnaise's various overseas operations, thereby increasing the flow of work and opportunities for the development of Northumbrian's business in this area.

* Co-operation within waste management

Northumbrian has in recent years been developing its waste management business. Lyonnaise anticipates that this will benefit technically and commercially from the support of Lyonnaise's waste operations, the greater size and technical strength of which will help Northumbrian to accelerate its development in this field.

REGULATORY ASPECTS AND TIMETABLE

Under the terms of the Water Industry Act 1991, the Secretary of State is under a duty to refer to the MMC arrangements in progress which may lead to a merger of water enterprises such as those involved in this case. However, since the Proposed Offer will also be subject to the EC Merger Regulation, a reference to the MMC requires the recognition by the EC Commission of the UK's legitimate interest in the regulation of the water industry. Lyonnaise understands that the UK is communicating its legitimate interest to the EC Commission. Lyonnaise anticipates that the Proposed Offer will be referred to the MMC before the end of March. It is therefore not the intention of Lyonnaise to announce formal offer terms at this stage. Lyonnaise anticipates that competition issues

in relation to the Proposed Offer (as opposed to water regulation) will be dealt with by the EC Commission. Lyonnaise intends to co-operate fully with the appropriate regulatory authorities during the period of review.

Assuming an acceptable conclusion to the regulatory processes, Lyonnaise intends to enter into negotiations with the board of Northumbrian regarding the terms of an offer and endeavour to seek a recommendation from the Northumbrian board. In the event that a recommendation cannot be obtained, however, Lyonnaise reserves the right to make a unilateral offer for Northumbrian. Lyonnaise hopes that an offer can be made to shareholders of Northumbrian in the Summer of 1995 and that such an offer will be completed as quickly as possible thereafter.

APPENDIX: Further information on Lyonnaise

Lyonnaise is organised around two main complementary areas of activity:

* Environmental Services

  Lyonnaise is involved in water distribution and treatment, supplying water services directly or through its affiliates to more than 40 million people around the world of which more than 26 million are outside France. It is also involved in waste management, energy, communication and mortuary services.

* Construction

  Lyonnaise designs, builds and operates public service facilities including the construction and management of urban infrastructures. It is also involved in building and civil engineering, roads and other construction related activities including electrical installation, industrial maintenance, off-shore oil and gas installations, design and engineering, concessionary operations (such as the operation of car parks and toll roads), piping and pipe laying.

For the year ended 31 December 1993, the Lyonnaise group reported consolidated turnover of FFr 93.6 billion (Â£10.8 billion), working capital provided by operations of FFr 6.0 billion (Â£0.7 billion), income before exceptional items and tax of FFr 2.8 billion (Â£321.8 million) and consolidated net income, after the deduction of minority interests, of FFr 804.0 million (Â£94.4 million).

The breakdown of total revenues by sector for the year ended 31 December 1993 was as follows:

	FFr Billion	per cent
Services		
- Water and holding companies	17.8	19 per cent
- Energy	10.5	11 per cent
- Waste management	6.1	7 per cent
- Communication and mortuary services	3.8	4 per cent
Total services	38.2	41 per cent
Construction		
- Building and civil engineering	24.5	26 per cent
- Roads	9.1	10 per cent
- Other construction related activities	9.5	10 per cent

Total construction	43.1	46 per cent
Other activities	12.3	13 per cent
Total Lyonnaise group	93.6	100 per cent

The breakdown of total revenues by geographic region for the year ended 31 December 1993 was as follows:

	FFr Billion	per cent
France	54.0	58 per cent
Rest of Europe	16.8	18 per cent
North America	14.1	15 per cent
Rest of the world	8.7	9 per cent
Total Lyonnaise group	93.6	100 per cent

Shareholders' equity, including minority interests of FFr 9.3 billion (Â£1.1 billion), of the Lyonnaise group as at 31 December 1993 was FFr 24.4 billion (Â£2.8 billion).

(Exchange rate as at 31 December 1993: FFr 8.7 : Â£1)

For the six months ended 30 June 1994, the Lyonnaise group reported consolidated turnover of FFr 48.3 billion (Â£5.8 billion), operating cash flow of FFr 3.1 billion (Â£369 million) and income on ordinary activities before tax of FFr 1.1 billion (Â£131 million).

(Exchange rate as at 30 June 1994: FFr 8.4 : Â£1)

Lyonnaise estimates that, based on unaudited management accounts, the consolidated turnover for the year ended 31 December 1994 was approximately FFr 98.8 billion (Â£11.4 billion at current exchange rates) as published in the official French publication, BALO, on 15 February 1995. In an announcement released on 19 January 1995, Lyonnaise stated that it anticipated that the consolidated net income for the year ended 31 December 1994, after the deduction of minority interests, would show an increase of between 25 per cent and 30 per cent over the previous year.

GENERAL

The contents of this announcement have been approved by N M Rothschild & Sons Limited and Indosuez Capital Limited for the purposes of Section 57 of the Financial Services Act 1986. It does not constitute an offer or invitation to purchase any securities. N M Rothschild & Sons Limited and Indosuez Capital Limited, which are both members of the Securities and Futures Authority, are each acting for Lyonnaise in connection with the Proposed Offer and no one else and will not be responsible to anyone other than Lyonnaise for providing the protections afforded to their customers or for providing advice in relation to the Proposed Offer.

For further information please contact:

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NOTES TO EDITORS

1. Structure of the Water Industry in England and Wales

Following the reorganisation of the water industry in September 1989, the Government issued licences for the provision of water and sewerage services throughout England and Wales to a number of companies. Ten of these, including Northumbrian, provide both water supply and sewerage services and are generally known as Water and Sewerage Companies ("WASCs"). Twenty one, including North East Water and Essex and Suffolk Water, provide water supply services only and are generally known as Water Supply Companies ("WSCs").

The WASCs provide all of the sewerage services and approximately three quarters of water supply in England and Wales. The WSCs provide water supply to the remainder of England and Wales. The WSCs are subject to regulation of their water supply activities in the same way as the WASCs. The sewerage services in their areas are the responsibility of the relevant local WASC.

2. The Water Industry in the north east

There are three companies engaged in the provision of water services in the north east, namely Northumbrian, North East Water and Hartlepool Water PLC which supplies households in the town of Hartlepool.

North East Water covers more than half the geographic area of Northumbrian and supplies water to 530,000 customers (1.3 million population) across most of Northumberland and the conurbations of Tyneside and Wearside.

Northumbrian supplies water and sewerage services to 459,000 households (1.2 million population) in two enclaves in Northumberland, namely in the Morpeth and Tynemouth areas, together with most of the southern half of the region. In addition, it provides sewerage services to almost all of the customers of the two other companies.

The Kielder Reservoir plays a major role in water management in the north east, releases from which enable flows in the three principal rivers in the region, the Tyne, the Wear and the Tees, to be regulated for water abstraction. Kielder will continue to play a dominant role in the water reserves

of the region.

Company	Water Supply Households	Water Supply Population	Water Supply Area
Hartlepool Water	35,000	92,000	90 sq.kms
North East Water	530,000	1,318,000	5,143 sq.kms
Northumbrian Water	459,000	1,200,000	3,850 sq.kms
TOTAL	1,024,000	2,610,000	9,083 sq.kms

Source: Water Services Association, Waterfacts - 1994

3. Sites where North East Water and Northumbrian already work together in supplying water

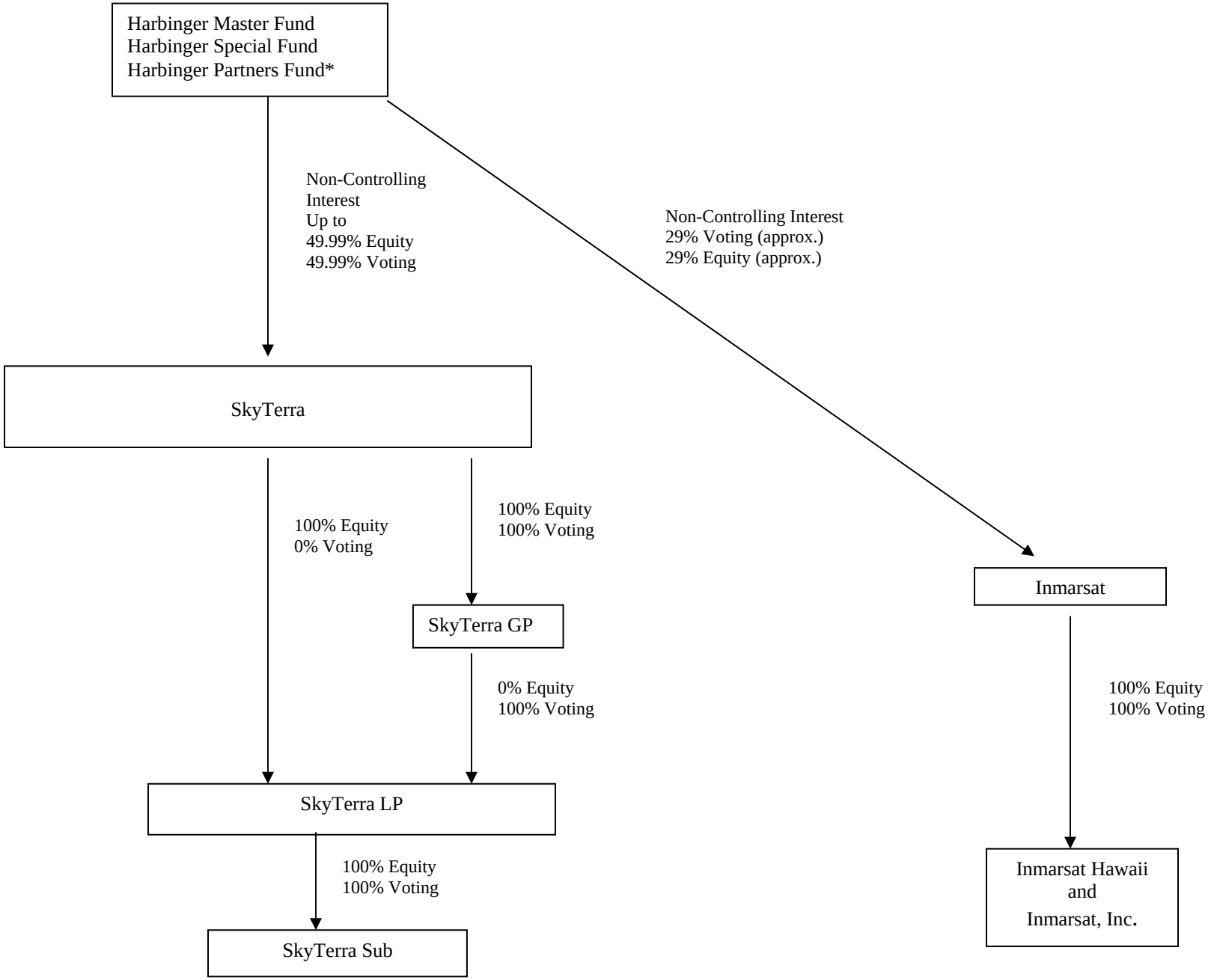
Apart from Kielder, there are already strong links between North East Water and Northumbrian in terms of the water supply infrastructure. North East Water supplies treated water in bulk to Northumbrian for its enclaves in Northumberland from its works at Warkworth on the River Coquet and from its Horsley Treatment Works on the River Tyne.

In County Durham, North East Water draws water from its Derwent Reservoir and treats it at the nearby Mosswood Treatment Works, which is jointly financed by North East Water and Northumbrian. Approximately 40 per cent of the treated water from this works is supplied to Northumbrian.

There is also a treatment plant at Wearhead in the upper reaches of the River Wear, owned by North East Water but supplied from Northumbrian's Burnhope Reservoir. A small proportion of the output from this works is supplied to Northumbrian in bulk.

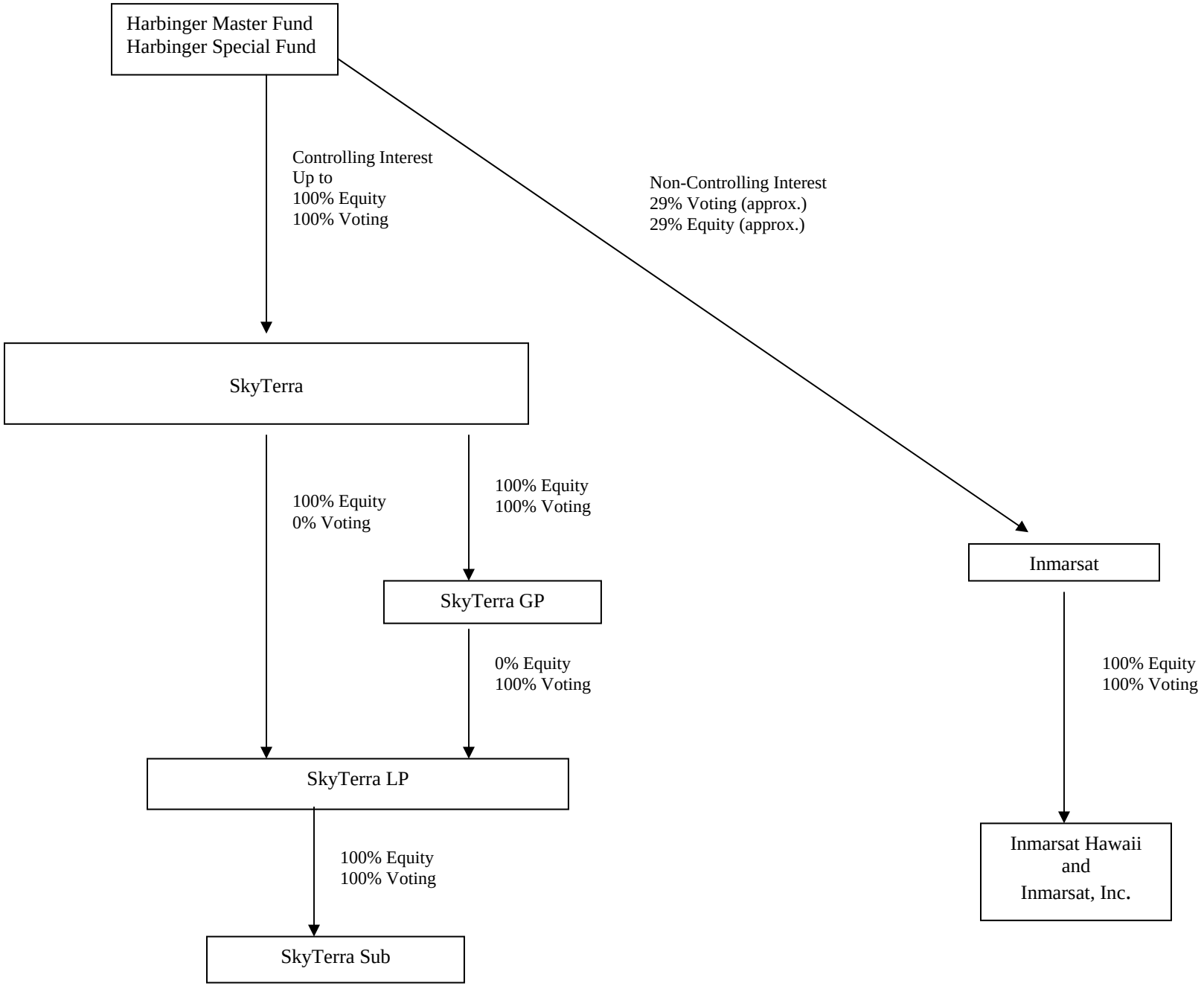
END

Attachment D, Chart #1
HARBINGER'S CURRENT (NON-CONTROLLING) INTERESTS IN SKYTERRA SUB, INMARSAT HAWAII, AND INMARSAT, INC.

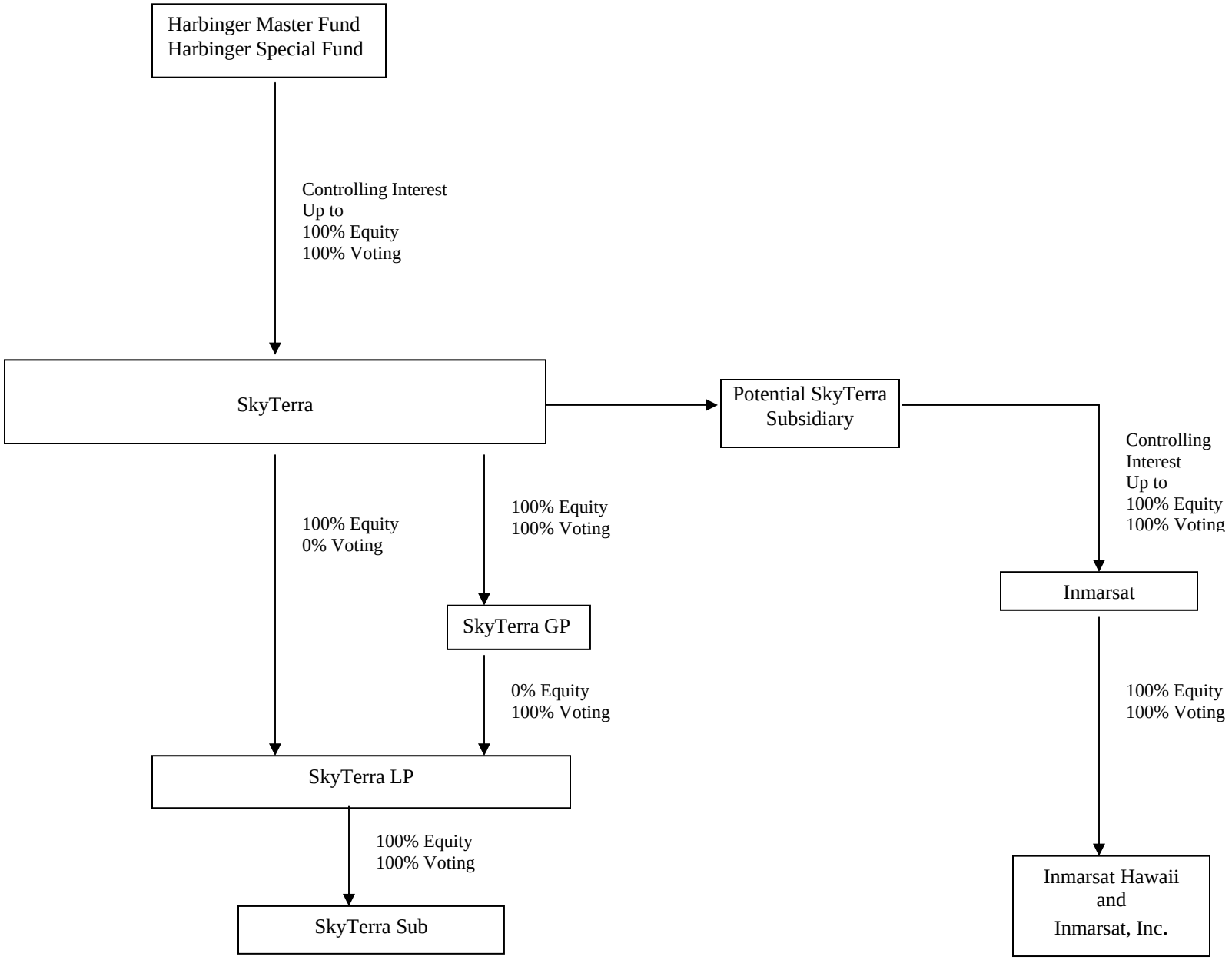


* As set forth in the Narrative, it is contemplated that interest of Harbinger Partners Fund in SkyTerra would be absorbed by the other listed Harbinger funds by the time of consummation of either transaction.

Attachment D, Chart #2
HARBINGER'S PROPOSED CONTROLLING INTEREST IN SKYTERRA SUB AND NON-CONTROLLING INTEREST IN INMARSAT HAWAII AND INMARSAT, INC.
(Intermediate Position)



Attachment D, Chart #3
HARBINGER'S PROPOSED CONTROLLING INTERESTS IN SKYTERRA SUB, INMARSAT HAWAII, AND INMARSAT, INC.*



* As discussed in the Narrative, the exact structure of the takeover has not been determined. As reflected in this Exhibit, for example, SkyTerra's interests in Inmarsat could run through a to be created subsidiary of SkyTerra.