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.

MSV is a joint venture partner of Mobile Satellite Ventures (Canada), Inc. ("MSV Canada"), which holds various Canadian authorizations to operate its own L-band MSS satellite (MSAT-1) as well as a next generation replacement (MSV-2) for that satellite. MSV and MSV Canada currently provide certain land mobile services in the United States and Canada via their existing satellites. MSV and MSV 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. MSV Canada is controlled by BCE, a Canadian corporation. Control of MSV Canada is unaffected by the transactions proposed herein.

SkyTerra is a holding company which holds an approximate 99% equity interest in its operating subsidiary, MSV L.P., a Delaware limited partnership, which wholly owns MSV Sub, a Delaware corporation. The general partner of MSV L.P. is Mobile Satellite Ventures 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 three FCC authorizations: two special temporary authorizations to operate an earth station and an experimental license. 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 and Harbert Management Corporation. The Master Fund is an exempted company organized under the laws of the Cayman Islands. The Special Situations Fund is a Delaware limited partnership. A more detailed description of these funds and their ownership structure is set forth in the Declaratory Ruling Petition that is Attachment B, hereto. Mr. Falcone and Raymond Harbert, both of whom are U.S. citizens, have ultimate control of the funds.

Harbinger currently holds approximately 29% of the issued and outstanding voting shares of Inmarsat and holds convertible bonds in Inmarsat. Harbinger also holds approximately a 35% equity and an approximately 48% voting interest in SkyTerra, plus warrants for additional voting shares of SkyTerra; and the right to acquire additional voting shares of SkyTerra out of escrow.[7] In addition, Harbinger owns approximately 31% of the

[7] This percentage includes approximately 3% of SkyTerra's voting common stock and 14% of SkyTerra's equity which is currently owned by the Partners Fund and which, as indicated in note 1 hereto, is contemplated to be distributed to the Master Fund and the Special Situations Fund.

voting/equity shares of TerreStar Corporation, which holds approximately 28% of the equity (none of it voting) in SkyTerra, as well as non-voting preferred stock and debt instruments in TerreStar. TerreStar Corporation'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 interest[8] of 10% or more (and, in each case, less than 25%): Satelites Mexicanos Sa de CV; Leap Wireless; The New York Times Company; and Media General Communications, Inc.

B. The Transactions

The transfer of control of SkyTerra/MSV to Harbinger would occur by the exercise by Harbinger of warrants and/or by other stock acquisition. If Harbinger is allowed to acquire all of the shares to which it currently has rights, it will hold in excess of 60% of the voting common stock of SkyTerra. Harbinger anticipates that in January 2009 and April 2009 it will receive warrants to acquire an additional 25,000,000 shares of the voting common stock of SkyTerra (pursuant to a $500 million financing facility that Harbinger has made available to MSV LP). Exercising these warrants would result in Harbinger holding approximately 75% of the voting common stock of SkyTerra.

[8] Although neither a voting nor equity interest, for the completion of the record, we note that Harbinger also holds approximately 51 million dollars (face value) in bonds in ICO Global, whose affiliate holds an LOI authorization from the Commission to operate an S-band MSS satellite in the United States.

The transfer of control of Inmarsat to Harbinger would be accomplished through the consummation of a tender offer for all of the issued and outstanding shares of Inmarsat (other than those already held by Harbinger) by SkyTerra (or a subsidiary of SkyTerra) or otherwise by way of a United Kingdom ("U.K.") court-approved cancellation scheme of arrangement with respect to the shares of Inmarsat.[9] As part of the financing of that transaction, Harbinger would contribute to SkyTerra Harbinger's currently-owned shares of Inmarsat, Harbinger's convertible bonds in Inmarsat and, as referenced in note 5 above, Harbinger's interests in TVCC.[10] 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 necessary to finance the acquisition of Inmarsat, so that at the conclusion of the transactions, it is expected that Harbinger would own in excess of 85% of the combined entity.[11]

C. Sequence of Transactions and Requested Waivers

Inmarsat is organized as a public company under the laws of England and Wales, hence any offer for Inmarsat would be regulated by the U.K.'s City Code on Takeovers and Mergers (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

---

[9] A cancellation scheme of arrangement under U.K. company law 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 outstanding shares or Inmarsat but by a different corporate mechanic which does not involve a transfer of shares.

[10] It may be that Harbinger does not contribute shares in Inmarsat themselves, but rather contributes shares in one or more companies whose sole material asset is the Inmarsat shares.

[11] Because the exact percentage cannot be determined at this time, among other reasons because it will vary depending upon the price to be paid for the Inmarsat shares, authority for Harbinger's interest to be as high as 100% is requested in the attached Declaratory Ruling Petition (Attachment B, hereto).

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, which is allowed its own period of 109 days in which to successfully complete. However, as noted, this process applies explicitly to offers referred to 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.).

A variant of this approach 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 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.[12] Under these procedures, there would be no need for the offer to lapse, or for Harbinger and SkyTerra's offer price and financial commitments to be left in place for a protracted period or lapsed and then 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 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, which is a very substantial company in the U.K.[13] whose services and customer base are viewed by U.K. authorities as sensitive, and the operation of the company 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."[14] 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."[15]

It is contemplated that under any tender offer for the shares of Inmarsat, the shareholders of Inmarsat would be given the choice of cash or of shares in SkyTerra, so that they

---

[12] *In Re Tender Offers and Proxy Contests*, Policy Statement, 59 R.R.2d 1536 (1986).
[13] Inmarsat is a constituent member of the FTSE 100 Index, which is comprised of the 100 largest U.K.-listed companies.
[14] *U.K. Takeover Code*, General Principle 2.
[15] *U.K. Takeover Code*, Rule 23.

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 shareholders the information needed to reach a properly informed decision, as the companies would be required to do 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.

These concerns were reinforced by the fact that the new SkyTerra shares also would need to be covered by a prospectus to be issued under the U.K.'s Prospectus Rules. Pursuant to those 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...."[16] The issues as to the companies' ability to comply with this standard were 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 must demonstrate that it controls the majority of its assets;[17] SkyTerra would not satisfy this test during the entire period that Inmarsat would be subject to the Commission's trustee mechanism.

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

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 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 as the result of Listing Rules 6.1.4 and 6.1.6 referred to above; or

- the 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 companies' 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 believed 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 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 deadline.

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 (and HSR) 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,[18] that the Commission grant the two waivers described below. Waiver of the Commission's rules is warranted when good cause is shown.[19] 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.[20] All of these conditions are satisfied in connection with the two waivers requested below because the waivers are consistent with the

[18] 47 C.F.R. § 1.3.
[19] 47 C.F.R. § 1.3; *see also WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969).
[20] *GE American*, 15 FCC Rcd 3385, 3391 (1999).

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.

(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,[21] 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."[22] 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."

---

[21] 47 C.F.R. § 1.743.

[22] *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.")

Accordingly, and in keeping with its precedents, the Commission should waive the signature requirement in connection with these applications.

(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.[23] 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.[24] The Commission first must assess whether the proposed transaction complies with the applicable parts of the Communications Act of 1934 and

[23] *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.").

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

with any other applicable statutes, and with the Commission's rules.[25] If so, then the Commission considers whether the transaction would result in any public interest harms "by substantially frustrating or impairing the objectives or implementation of the Act or related statutes."[26] 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.[27]

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."[28] As the Commission has recognized, today's telecommunications marketplace is extraordinarily dynamic,[29] as is the satellite industry.[30] The Commission has

---

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

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

[27] *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).

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

[29] *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"),

[30] *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.").

found that it should proceed cautiously prior to imposing regulatory burdens during periods of technological change.[31]

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

SkyTerra already holds a controlling interest in MSV, which has been approved by the Commission.[32] The FCC qualifications of SkyTerra as presently owned, therefore, are a matter of public record. The qualifications of Harbinger are set forth in the applications with which this Narrative is associated, which are listed in Attachment A hereto, and in the Declaratory Ruling Petition discussed below.

Certain FCC authorizations held by MSV Sub are common carrier radio licenses that are subject to the foreign ownership limits of Section 310(b)(4) of the Communications Act. In connection with these common carrier licenses, the Commission has granted Harbinger interim authority pursuant to Section 310(b)(4) to hold a non-controlling interest of up to 49.99 percent equity and voting interests in SkyTerra.[33] This interim authority is subject to Commission action upon a pending petition for a declaratory ruling seeking the same authority on a permanent

---

[31] *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 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.").

[32] *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).

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

basis.[34] Attachment B hereto is a new petition for declaratory ruling (the "Declaratory Ruling Petition") seeking authority pursuant to Section 310(b)(4) for Harbinger to hold interests in SkyTerra in excess of the 49.99 percent equity and voting interests that are presently authorized on an interim basis.[35]

Subject to a favorable Commission ruling on the Declaratory Ruling Petition and 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 MSV (and SkyTerra) have a long history of cooperating with the United 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.[36] The parties intend forthwith to initiate discussions with Executive Branch agencies with respect to the proposed transactions and have every expectation that they will be able to satisfy any concerns that these agencies may raise.

---

[34] *Id.* at 2008 FCC Lexis *28.

[35] No Section 310(b)(4) is sought in connection with the proposed transfer of control of Inmarsat, because Inmarsat holds no FCC licenses or authorizations that are subject to Section 310(b)(4).

[36] *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).

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 MSV 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 MSV 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 interests such as more efficient spectrum use,[37] fleet optimization and management[38] and the deployment of an essential communication system for public safety, first responders and emergency preparedness

[37] *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*").

[38] *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*").

agencies.[39] The Commission has approved satellite transactions because they enable the merging firms to realize economies of scale and scope,[40] increase innovation[41] and generate significant cost savings.[42] 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.[43] As detailed below, the consolidated operation of MSV and Inmarsat will result in all of these pro-competitive benefits and then some.

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 MSV 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

---

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

[40] *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*").

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

[42] *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*").

[43] *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*").

enforcement, public aid agencies, and the public. . . ."[44] 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."[45]

Achieving such promise is, however, made more difficult and costly by the fact that MSV 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."[46]

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

---

[44] *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*").

[45] *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*")

[46] *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).

spectrum as a margin of error. Coordination agreements address these kind 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 MSV and Inmarsat in a position to preserve and improve traditional MSS services, as the net effect will be more usable spectrum.

While MSV 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,[47] that Agreement cannot compare in time, cost or 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.[48] 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

[47] *Cooperation Agreement* at 29.
[48] *MSS Flexibility Order 2005*, 20 FCC Rcd 4616.

effective, in the MSS component or the *ATC* component of an MSS-ATC system."[49] 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."[50]

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.[51] But as the experience of the Mexico City Memorandum of Understanding demonstrates,[52] such ongoing arrangements among parties sharing use of spectrum with divergent commercial interests are difficult to successfully implement long term and do not 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[53] 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

---

[49] *Id.* at 4633.
[50] *Id.*
[51] *Cooperation Agreement* at p. 29.
[52] 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.
[53] *Cooperation Agreement* at pgs. 6-15.

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.

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 MSV and Inmarsat will provide instant credibility with chip and handset manufacturers. The point is that, as a combined operation, MSV 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.[54] Combined, the parties will be able to secure larger volume discounts from suppliers, and pass those lower costs through to consumers in the 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.[55] 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"[56] and also will "eliminate operational and transactional difficulties and costs for MSS operators in negotiating separate terrestrial roaming agreements."[57] As a result of the anticipated "[u]rban penetration capability, lower-priced

[54] *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").
[55] *See generally MSS Flexibility R&O 2003*, 18 FCC Rcd at 1976.
[56] *MSS Flexibility Order 2005*, 20 FCC Rcd at 4619.
[57] *Id.*

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."[58]

C. The Transaction Will Generate Additional Operating Efficiencies

(1) More Efficient Use of Satellites and Orbital Resources

MSV'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 MSV and Inmarsat to "maximize back-up capabilities" by repositioning their fleets.[59] 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.[60] 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.[61] Here, the proposed transaction will enhance R&D activities and innovation, allowing the parties

---

[58] *MSS Flexibility R&O 2003*, 18 FCC Rcd at 1977.
[59] *See generally PanAmSat/Intelsat Merger Order*, 21 FCC Rcd at 7390.
[60] *E.g., SBC/AT&T Merger Order*, 20 FCC Rcd at 18388-18389.