

May 6, 2010

Via Electronic Submission

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW, Room TW-A325
Washington, DC 20554

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Re: Notice of Ex Parte Communication, IB Docket No. 08-184

Dear Ms. Dortch:

Yesterday, May 5, 2010, representatives of Sprint Nextel Corporation (“Sprint Nextel”) and their outside counsel met with Commission staff to discuss the Oppositions of Sprint Nextel (“Oppositions”) to Petitions for Reconsideration by AT&T Inc. and Verizon Wireless (the “Petitioners”) of the March 26, 2010 Order by the Chiefs of the Commission’s International Bureau, Office of Engineering and Technology, and Wireless Telecommunications Bureau (the “Bureaus”) in the above-referenced docket.

In attendance were Lawrence Krevor and Trey Hanbury of Sprint Nextel; Marc Martin and Peter Denton of K&L Gates LLP, Sprint Nextel’s outside counsel; Austin Schlick, Jim Bird, Neil Dellar, Nandan Joshi, and Joel Rabinovitz of the Office of General Counsel; Jim Ball, Mindel De La Torre, Gardner Foster, Howard Griboff, and Roderick Porter of the International Bureau; and Paul Murray of the Wireless Telecommunications Bureau.

The Order in the above-referenced docket granted authority to transfer control of SkyTerra Subsidiary, LLC and its respective licenses and authorizations from the shareholders of SkyTerra Communications, Inc. to Harbinger Capital Partners Funds (collectively, the “Applicants”), subject to three voluntary commitments made by the Applicants and adopted by the Bureaus as conditions to the Order’s grant of authority (the “Conditions”). Petitioners requested that the Bureaus, on reconsideration of the Order, remove two of the Conditions.

Sprint Nextel’s discussion was consistent with its Oppositions, and the Sprint Nextel representatives recounted their arguments that Petitioners have no standing to petition for reconsideration of the Order, that the Order does not deprive Petitioners of any due process rights, that the Conditions comply with the FCC’s statutory authority and precedent, that the Conditions are not arbitrary or capricious, that the Conditions do not violate Section 202(a)

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of the Communications Act, and that the Bureaus have delegated authority to impose the Conditions.

The Sprint Nextel representatives stated that the Bureaus acted reasonably and within their delegated authority in imposing narrowly tailored, transaction-specific merger conditions ensuring that the public interest is served by the transaction under review in the above-referenced docket. They asserted that the Conditions do not single-out Petitioners arbitrarily and that market share is not an arbitrary rubric by which to analyze the competitive effects of the transaction. Further, Sprint Nextel's representatives noted that the Applicants are free to approach the Commission at any time to demonstrate changed circumstances as to market share or to the competitive balance of the wireless industry that may make the Conditions unnecessary or unwarranted. The Sprint Nextel representatives also averred that Verizon Wireless' reliance in its Reply on precedent concerning judicial review of agency decisions is inapplicable in the instant matter.

The Sprint Nextel representatives further discussed Harbinger's *de minimis* nonattributable interest in Sprint Nextel of approximately 3 percent or less. They explained that Harbinger functions as an institutional and passive investor in Sprint Nextel, a widely held NYSE stock, with absolutely no indicia of control or influence in Sprint Nextel's policy decisions.

Additionally, the Commission staff present at the meeting asked Sprint Nextel's representatives to provide examples of similar transactions approved by the Commission or its Bureaus subject to conditions intended to remedy prospective public interest harms resulting from the transaction.

With this in mind, we note that in the *XM-Sirius Order*,¹ the Commission identified a potential reduction in programming diversity and viewpoint diversity as a potential public interest harm resulting from the merger of two satellite radio companies.² To mitigate this prospective public interest harm, the Commission conditioned its approval of the transaction on the applicants' voluntary commitments to set aside capacity for noncommercial educational and informational programming.³ The Commission adopted these conditions

¹ *Applications for Consent to the Transfer of Control of Licenses, XM Satellite Radio Holdings Inc., Transferor, to Sirius Satellite Radio Inc., Transferee*, MB Docket No. 07-57, Memorandum Opinion and Order, 23 FCC Rcd 12348 (2008) (cited in the Order at ¶¶ 10-13 and in the Oppositions at p. 13).

² *Id.* ¶¶ 70-71.

³ *Id.* ¶ 72.

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despite having previously declined to impose public interest programming obligations for the satellite digital audio radio service in a rulemaking proceeding. In the *XM-Sirius Order*, the applicants made an offer to enhance programming and viewpoint diversity in light of the prospective competitive harms the XM-Sirius merger presented, which the Commission, in its discretion as the expert agency on communications matters, determined would make the transaction better serve the public interest.

Similarly, in the instant matter, the Bureaus acknowledged that the transaction, in the absence of the Applicants' voluntary commitments, could have negative prospective effects on competition and thereby not fully serve the public interest. The Bureaus therefore conditioned their approval of the transaction on the Applicants' voluntary commitments, which the Bureaus determined would mitigate the prospective competitive harms.

Pursuant to Section 1.1206 of the Commission's Rules, a copy of this letter is being filed electronically in the above-referenced dockets and copies are being submitted to Commission staff listed below. If you have any questions, please feel free to contact me at (202) 778-9859.

Sincerely,

/s/ Marc S. Martin
Marc S. Martin

cc: Austin Schlick
Jim Bird
Neil Dellar
Nandan Joshi
Joel Rabinovitz
Jim Ball
Mindel De La Torre
Gardner Foster
Howard Griboff
Roderick Porter
Paul Murray