

August 5, 2010

Via ECFS

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

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**Re: Harbinger Capital Partners Funds/SkyTerra Communications, Inc.
Written *Ex Parte* Presentation, IB Docket No. 08-184**

Dear Ms. Dortch:

Sprint Nextel Corporation (“Sprint Nextel”), by its counsel, provides this brief response to two recent letters submitted by Verizon Wireless (“Verizon”) dated July 6 and July 14, 2010, respectively (the “Letters”), regarding the *SkyTerra Order* in the above-referenced proceeding.¹

In the Letters, Verizon once again reargues points that have been briefed at length in the *SkyTerra Order* reconsideration proceeding; accordingly, Sprint Nextel will let its prior responses to those points speak for themselves. Sprint Nextel briefly addresses herein how the Letters reflect Verizon’s effort to distract the Bureaus from the substantive flaws in Verizon’s legal arguments for reconsideration.

Verizon’s latest tactic is to try to change the topic of its petition for reconsideration from the market power of the two leading wireless carriers based on aggregate nationwide revenue, to a red herring about the raw megahertz of spectrum in which Sprint Nextel may hold an attributable interest. Sprint Nextel’s spectrum holdings are a matter of public record and wholly irrelevant to whether the SkyTerra’s voluntary conditions will enhance the public interest. Tallying the raw megahertz of spectrum “attributable” to a parent company says nothing about the market value of the spectrum and even less about the market power of the

¹ *In the Matter of SkyTerra Communications, Inc., Transferor (“SkyTerra”) and Harbinger Capital Partners Funds, Transferee (“Harbinger”), et al*, Memorandum Opinion and Order and Declaratory Ruling, IB Docket No. 08-184, 25 FCC Rcd. 3059 (2010) (“*SkyTerra Order*”) (Harbinger and SkyTerra collectively, the “Applicants”).

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parent company. As noted in Sprint Nextel's Opposition, the two largest wireless firms have market shares on the basis of 2009 reported revenue of 32% and 35%, respectively, for a two-firm concentration ratio of 67%.² The Federal Trade Commission has characterized a market with a two firm concentration ratio of 60% as an "advanced oligopoly."³ Verizon's effort to somehow make its petition to reconsider the *SkyTerra Order* about Sprint Nextel's attributable spectrum holdings is a transparently self-serving diversion from the Commission's rationale in adopting SkyTerra's voluntary commitments to assure that the transfer of control is in the public interest.

Verizon carries the burden to persuade the Bureaus that they erred in adopting the voluntary commitments of SkyTerra as conditions to serve the public interest. Verizon has failed to overcome the vast statutory and precedential authority in favor of the Commission's discretion to adopt conditions that promote competition and serve the public interest.⁴ Indeed, Verizon now resorts to citing an inapposite case to argue that the Bureaus cannot further clarify on reconsideration the reasoning for adopting the conditions.⁵ It would be difficult, if not impossible, however, for an agency to provide an adequate explanation for its disposition of any petitions for reconsideration if it were not permitted to further clarify its reasoning for its original decision.

In the decision that Verizon cites, *Kennecott*, the court found that the EPA failed to provide an opportunity for notice and comment before adopting a final rule of general application, and that petitions for reconsideration were not an adequate substitute for notice and comment in a rulemaking proceeding. The *SkyTerra Order*, however, is the result of an adjudicatory proceeding, not a rulemaking. No final rules of general application were adopted by the Bureaus therein.⁶ Therefore, the *Kennecott* holding is inapposite and does not limit the Bureaus' authority to further clarify the *SkyTerra Order* on reconsideration.

² Opposition of Sprint Nextel to Petition for Partial Reconsideration of Verizon Wireless, IB Docket No. 08-184, *et al.*, at 11 (Apr. 12, 2010) ("Opposition").

³ *Id.*

⁴ *See, e.g.*, 47 U.S.C. §§ 303(r) and 310(d). Opposition at 8-14.

⁵ *See* Letter to Marlene H. Dortch, Secretary, Federal Communications Commission from Bryan N. Tramont, Counsel to Verizon Wireless, at 3 n.13 (July 6, 2010) (citing *Kennecott Corp. v. EPA*, 684 F.2d 1007, 1019 (D.C. Cir. 1982) ("*Kennecott*").

⁶ *See* Opposition at 5-8.

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Similarly, Verizon's invocation of the Commission's recent adoption of the *Spectrum Flexibility NPRM and NOI*⁷ is another attempted red herring. Verizon contends that this rulemaking is the proper forum to take up the policies underlying the *SkyTerra Order* conditions. But as Sprint Nextel noted in its Opposition, the *SkyTerra Order's* transaction-specific, narrowly tailored conditions were volunteered by the Applicants to ensure that Harbinger's acquisition of SkyTerra would serve the public interest. If the conditions are breached, the Commission will enforce them solely against the Applicants, not Verizon. The Commission's subsequent initiation of a proceeding to evaluate whether the public interest would be served in the future by adopting more flexible licensing and operational rules for spectrum currently allocated to the mobile satellite service are irrelevant to the sustainability of the *SkyTerra Order*.

In short, the *SkyTerra Order's* conditions are not only consistent with the Commission's authority and precedent, but also essential to finding that Harbinger's acquisition of SkyTerra serves the public interest.

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

Sincerely,

/s/ Marc S. Martin

Marc S. Martin

cc: Bruce Gottlieb
Rick Kaplan
John Giusti
Angela Giancarlo
Louis Peraertz
Charles Mathias
Austin Schlick
Ruth Milkman
Mindel De La Torre

⁷ *In re Fixed and Mobile Services in the Mobile Satellite Service Bands, et al*, Notice of Proposed Rulemaking and Notice of Inquiry, ET Docket No. 10-42, FCC 10-126 (July 15, 2010) ("*Spectrum Flexibility NPRM and NOI*").