

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

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

To: The Chief, International Bureau  
The Chief, Office of Engineering and Technology  
The Chief, Wireless Telecommunications Bureau

**SUPPLEMENT TO PETITION FOR PARTIAL RECONSIDERATION**

Verizon Wireless hereby supplements its Petition for Partial Reconsideration based on troubling new facts that underscore the procedural infirmities in this case.<sup>1</sup>

It is now clear that proposed commitments materially similar to the conditions in the Order were submitted by the applicants a full month prior to the Order's adoption, but Verizon Wireless remained unaware that it was targeted because the submission was shielded by a request for confidentiality that was withdrawn only after the Order was released. This new information further demonstrates that the procedures involved in the adoption of the conditions at issue here were anything but the transparent and open decisionmaking the Commission has

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<sup>1</sup> See Verizon Wireless, Petition for Partial Reconsideration, IB Docket No. 08-184 *et al.* (Apr. 1, 2010) ("Petition"); see also Verizon Wireless, Reply to Oppositions to Petition for Partial Reconsideration, IB Docket No. 08-184 *et al.*, at 1-5 (Apr. 1, 2010) ("Reply"). The Petition seeks partial reconsideration of *SkyTerra Communications, Inc. and Harbinger Capital Partners Funds*, IB Docket No. 08-184 *et al.*, DA 10-535 (rel. Mar. 26, 2010) ("Order"). This supplement is timely under 47 C.F.R. § 1.106(f) ("The petition for reconsideration and any supplement thereto shall be filed within 30 days from the date of public notice ....").

repeatedly emphasized is critical to the public interest. To the contrary, the fact that the applicants and the Bureaus were discussing conditions that directly affected Verizon Wireless was not disclosed until at least a month later, *after* the Order was released. This new evidence provides further grounds for eliminating the conditions.

## DISCUSSION

The Order, released March 26, 2010, adopted conditions prohibiting Verizon Wireless's access to SkyTerra spectrum or terrestrial network capacity without FCC approval.<sup>2</sup> Harbinger proposed those conditions in a letter also dated March 26, 2010 and appended to the Order.<sup>3</sup> As the Petition has already established, the Bureaus adopted the conditions without providing Verizon Wireless – a non-party to the transaction – *any* notice or opportunity to comment. While the *March 26<sup>th</sup> Letter* referenced a filing submitted on February 26, 2010 requesting confidential treatment,<sup>4</sup> it left unclear the degree to which the conditions ultimately adopted by Order were similar to those described in the confidential *February 26<sup>th</sup> Letter*.

Following the release of the Order, Harbinger withdrew – without explanation – its request for confidentiality of the *February 26<sup>th</sup> Letter*,<sup>5</sup> and it became public. It is now clear that the conditions adopted by the Order are materially the same as those proposed a full month

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<sup>2</sup> *Order* at ¶ 72 & Appx. B.

<sup>3</sup> *See* Letter from Henry Goldberg and Joseph A. Godles, Counsel for the Harbinger Capital Partners Funds, to Marlene H. Dortch, Secretary, Federal Communications Commission, IB Docket No. 08-184 *et al.* (Mar. 26, 2010) (“*March 26<sup>th</sup> Letter*”), *appended* to Order as Appx. B.

<sup>4</sup> *See* Letter from Henry Goldberg and Joseph A. Godles, Counsel for the Harbinger Capital Partners Funds, to Marlene H. Dortch, Secretary, Federal Communications Commission, IB Docket No. 08-184 *et al.* (February 26, 2010) (“*February 26<sup>th</sup> Letter*”).

<sup>5</sup> *See* Letter from Henry Goldberg and Joseph A. Godles, Counsel for the Harbinger Capital Partners Funds, to Marlene H. Dortch, Secretary, Federal Communications Commission, IB Docket No. 08-184 (April 15, 2010) (“On February 26, 2010, Harbinger requested that a filing it submitted on that date ... be withheld from public inspection because the filing contained sensitive information concerning Harbinger's business plan and investment strategies. Harbinger hereby withdraws its request”).

before the Order was adopted.<sup>6</sup> Yet, at no point during the month after they were first proposed did Verizon Wireless *ever* receive notice that its access to spectrum and alternative network capacity was at risk of being restricted via an adjudicatory proceeding to which it was not a party.

The applicants, moreover, did not submit any notifications of *ex parte* contacts reflecting any discussions involving conditions to the grant, let alone any discussion of the substantive commitments at issue here. Further, there are no facts in the record that could possibly justify the conditions, nor were any petitions to deny or informal objections seeking such conditions filed.

The questionable basis for Harbinger's confidentiality request raises additional concern about the process. The *February 26<sup>th</sup> Letter* contained a cover letter requesting blanket confidentiality of two attachments (stamped "confidential" throughout) and asserting that the materials involved "sensitive information concerning Harbinger's business plan and investment strategies," which "qualif[y] as trade secrets and commercial information."<sup>7</sup> While the first attachment dealt with Harbinger's business model, the second identified commitments it would make to obtain FCC approval of the transaction. The request for confidentiality is devoid of any explanation for how the commitments involving the first and second largest wireless carriers constitute trade secrets and commercial information or why those commitments should be

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<sup>6</sup> While the draft conditions lack some of the detail that appears in the final version (for example, the draft conditions do not discuss penalties for non-compliance), both plainly preclude SkyTerra from making available to "the largest or second largest provider of commercial mobile radio services" its L-Band spectrum without FCC approval ("Condition 1"), or providing terrestrial wireless capacity to those providers that accounts for more than 25 percent of SkyTerra-Harbinger's total bytes of data without FCC approval ("Condition 3"). *Compare February 26<sup>th</sup> Letter* (attachment discussing Harbinger Commitments) *with March 26<sup>th</sup> Letter*, Att. 2.

<sup>7</sup> *February 26<sup>th</sup> Letter* at 1-2.

confidential.<sup>8</sup> The Bureaus released the full text of both Harbinger’s business plan and its commitments with the Order, undercutting the claim that the documents were entitled to confidential treatment. Of course by that point the commitments represented a final deal between Harbinger and the Bureaus.

Stripped to its essence, the filing of the proposed commitments under these circumstances prevented Verizon Wireless from learning of their existence until after the Order was adopted. This new information underscores that the conduct in this proceeding denied Verizon Wireless – a target of two of the Order’s key conditions – any opportunity to be heard, and underscores the unlawfulness of the conditions themselves. This deprivation of Verizon Wireless’s due process and other rights represents the antithesis of open and transparent decisionmaking, and further establishes why the conditions should be eliminated immediately.

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<sup>8</sup> See 47 C.F.R. § 0.459(c) (“Casual requests (including simply stamping pages ‘confidential’) ... will not be considered.”); *National Exchange Carrier Ass’n Inc.*, 5 FCC Rcd 7184, 7184 ¶ 3 (1990) (“While an elaborate economic analysis need not be made to establish the likelihood of substantial competitive injury, ‘conclusory and generalized allegations’ cannot support nondisclosure.”) (quoting *Nat’l Parks and Conservation Ass’n v. Kleppe*, 547 F.2d 673, 680-81 (D.C. Cir .1976)); see also *IKUSI-Angel Iglesias, S.A.*, 19 FCC Rcd 10323, 10324 ¶ 4 (EB/SED 2004) (denying as “overbroad” a request for confidentiality that “does not ... explain the degree to which ... information is commercial or financial or contains a trade secret ... or explain how disclosure ... could result in substantial competitive harm”).

**CONCLUSION**

For the additional reasons set forth herein, as well as in the Petition and Reply, the adoption of Conditions 1 and 3 in the Order should be rescinded.

Respectfully submitted,



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April 26, 2010

## CERTIFICATE OF SERVICE

I, Robert G. Morse, hereby certify that on this 26th day of April, 2010, I caused to be served a true copy of the foregoing "Supplement to Petition for Partial Reconsideration" by first class mail, postage pre-paid, and by email where indicated (\*), upon the following:

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