

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
Mobile Satellite Ventures Subsidiary LLC and) File No. ISP-PDR-20070314-00004
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.) File No. ISP-PDR-20080111-00001
and Harbinger Capital Partners Special Situations)
Fund, L.P.)
Petition for Expedited Action for Declaratory)
Ruling Under Section 310(b) of the)
Communications Act of 1934, as Amended)

ORDER AND DECLARATORY RULING

Adopted: March 7, 2008

Released: March 7, 2008

By the Commission: Commissioners Copps concurring and issuing a statement.

I. INTRODUCTION

1. In this Order and Declaratory Ruling, we consider a petition for declaratory ruling filed by Mobile Satellite Ventures Subsidiary LLC (MSV) and SkyTerra Communications, Inc. (SkyTerra and, together with MSV, the "Petitioners") pursuant to section 310(b)(4) of the Communications Act of 1934, as amended (the "Act").

1 47 U.S.C. § 310(b)(4). Mobile Satellite Ventures Subsidiary LLC and SkyTerra Communications, Inc., Petition for Declaratory Ruling under Section 310 of the Communications Act, as Amended, File No. ISP-PDR-20070314-00004 (filed March 14, 2007) (MSV/SkyTerra Petition), amended by Letter from Tom W. Davidson, Counsel for SkyTerra, and Bruce Jacobs, Counsel for Mobile Satellite Ventures Subsidiary LLC (MSV), to Marlene H. Dortch, Secretary, Federal Communications Commission (FCC) (dated Oct. 5, 2007) (October 5, 2007 Letter); Letter from Tom W. Davidson, Counsel for SkyTerra, to Marlene H. Dortch, Secretary, FCC (dated Nov. 6, 2007) (November 6, 2007 Letter); Letter from Tom W. Davidson, Counsel for SkyTerra, to Marlene H. Dortch, Secretary, FCC (dated Nov. 26, 2007) (November 26, 2007 Letter). See also Letter from Tom W. Davidson and Karen Milne, Counsel for SkyTerra, and Bruce Jacobs and Clifford M. Harrington, Counsel for MSV, to Marlene H. Dortch, Secretary, FCC (dated Jan. 25, 2008) (January 25, 2008 Letter); Letter from Tom W. Davidson, Counsel for SkyTerra, to Marlene H. Dortch, Secretary, FCC (dated Jan. 29, 2008) (January 29, 2008 Letter).

existing shareholders, Harbinger Capital Partners Master Fund I, Ltd. (Master Fund) and Harbinger Capital Partners Special Situations Fund, L.P. (Special Fund) (and, together with the Master Fund, the “Harbinger Funds” or “Harbinger Petitioners”) requesting expedited action for interim authority under section 310(b)(4) of the Act to increase their ownership in MSV.² We grant the petition for interim authority for the Harbinger Petitioners to increase their ownership in MSV through open market purchases of SkyTerra shares, not to exceed a non-controlling (*de jure* or *de facto*) 49.99 percent equity interest and 49.99 voting interest, subject to and without prejudice to any action the Commission may take on the separate Harbinger Funds petition requesting a declaratory ruling under section 310(b)(4) for permanent authority.³

II. BACKGROUND

2. MSV is a Delaware limited liability company that holds FCC licenses and authorizations and that operates a Mobile Satellite Service (MSS) system in the L-band.⁴ It uses both its own U.S.-licensed satellite and the Canadian-licensed L band satellite (MSAT-1) licensed to Mobile Satellite Ventures (Canada), Inc.⁵

3. On September 15, 2006, the International Bureau, the Wireline Competition Bureau, and the Office of Engineering and Technology released the *2006 MSV Order* that consented to the transfer of control of Commission licenses and authorizations held by MSV from Motient Corporation (Motient) to SkyTerra.⁶ The *2006 MSV Order* also included a declaratory ruling that approved specific amounts of

² Harbinger Capital Partners Master Fund I, Ltd. and Harbinger Capital Partners Special Situations Fund, L.P., Amended Petition for Expedited Action for Declaratory Ruling under Section 310(b) of the Communications Act, as amended, File No. ISP-PDR-20080111-00001 (Petition for Interim Authority). The Petition for Interim Authority, originally filed January 11, 2008, was amended twice to update and correct information contained in the original petition. The third and final amendment, filed on January 17, 2008, was jointly signed by Harbinger Capital Partners Master Fund I, Ltd., Harbinger Capital Partners Special Situations Fund, L.P., SkyTerra Communications, Inc., and Mobile Satellite Ventures Subsidiary LLC (January 17, 2008). This is the version of the Petition for Interim Authority we grant in this *Order and Declaratory Ruling*.

³ See Harbinger Capital Partners Master Fund I, Ltd. and Harbinger Capital Partners Special Situations Fund, L.P., Petition for Declaratory Ruling Under Section 310(b) of the Communications Act of 1934, as amended, File No. ISP-PDR-20080129-00002 (Petition for Permanent Authority).

⁴ In 1989, the Commission licensed MSV to operate a U.S. Mobile Satellite Service (MSS) in the L band. Amendment of Parts 2, 22 and 25 of the Commission’s Rules to Allocate Spectrum for and to Establish Other Rules and Policies Pertaining to the Use of Radio Frequencies in a Land Mobile Satellite Service for the Provision of Various Common Carrier Services, Hughes Communications Mobile Satellite, Inc., *et al.*, Gen. Docket No. 84-1234, *Memorandum Opinion, Order and Authorization*, FCC 89-183, 4 FCC Rcd 6041 (1989), *remanded by Aeronautical Radio, Inc. v. FCC*, 928 F.2d 428 (D.C. Cir. 1991), *Final Decision on Remand*, 7 FCC Rcd 266 (1992), *aff’d*, *Aeronautical Radio, Inc. v. FCC*, 983 F.2d 275 (D.C. Cir. 1993); see also *AMSC Subsidiary Corporation, Memorandum Opinion and Order*, FCC 93-243, 8 FCC Rcd 4040 (1993). The “L-band” is a general designation for frequencies from 1 to 2 GHz. In the United States, the Commission has allocated L-band spectrum for MSS downlinks (space to Earth transmissions) in the 1525-1544 MHz and 1545-1559 MHz bands and for MSS uplinks (Earth to space transmissions) in the 1626.5-1645.5 MHz and 1646.5-1660.5 MHz bands. See 47 C.F.R. § 2.106.

⁵ See MSV/SkyTerra Petition at 3.

⁶ *Motient Corporation and Subsidiaries, Transferors, and SkyTerra Communications, Inc., Transferee, Application for Authority to Transfer Control of Mobile Satellite Ventures Subsidiary LLC*, WC Docket No. 06-106, *Memorandum Opinion and Order and Declaratory Ruling*, DA 06-1872, 21 FCC Rcd 10198 (WTB, OET, Int’l Bur. 2006) (*2006 MSV Order*). The transfer of control of MSV to SkyTerra was consummated on September 26, 2006. See Letter from Tom W. Davidson, Counsel for SkyTerra, to Marlene H. Dortch, Secretary, FCC (dated Sept. 26, (continued....))

indirect foreign equity and voting interests that would be held in MSV upon consummation of the transfer of control.⁷ As part of the transfer of control of MSV from Motient to SkyTerra, Motient had to distribute by way of a dividend approximately 25.5 million shares of non-voting SkyTerra stock to Motient shareholders, which would have the effect of converting the SkyTerra non-voting stock to voting stock.⁸ This distribution, however, has yet to occur due to pending litigation. Accordingly, the total number of outstanding voting shares of SkyTerra is approximately half of what the number of outstanding voting shares would have been had the dividend occurred. In addition, certain foreign shareholders have increased their ownership interests in SkyTerra since the *2006 MSV Order* was issued. Thus, the indirect foreign ownership in MSV is greater than the amount approved in the *2006 MSV Order*.

4. On March 14, 2007, MSV and SkyTerra filed a petition for declaratory ruling seeking approval for the current levels of indirect foreign ownership in MSV as set forth in their filings. The International Bureau placed the MSV/SkyTerra Petition on public notice as acceptable for filing on April 27, 2007.⁹ No oppositions to or comments on the petition were received.¹⁰ MSV and SkyTerra subsequently supplemented their petition with additional information.¹¹

5. Additionally, in January 2008, the Harbinger Petitioners jointly filed a petition requesting expedited action for interim authority under section 310(b)(4) of the Act to increase their indirect ownership in MSV through additional purchases of SkyTerra shares on the open market.¹² The Harbinger Petitioners request approval for the Harbinger Funds to make additional purchases in SkyTerra that would increase their aggregate equity interest in MSV by as much as 27 percent, and would increase their aggregate voting interest in MSV by as much as 31.36 percent. The Harbinger Petitioners assert that the Harbinger Funds would not purchase more than 49.99% of SkyTerra's shares (equity or voting), preventing the Harbinger Funds from having *de jure* control of MSV. Moreover, the Harbinger Petitioners recognize that grant of their Petition for Interim Authority would not give the Harbinger Funds authority to exercise *de facto* control over SkyTerra or MSV without first obtaining Commission approval for a transfer of control.¹³

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2006). Motient Corporation subsequently changed its name to TerreStar Corporation. See November 6, 2007 Letter.

⁷ In the *2006 MSV Order* the Bureau issued a declaratory ruling permitting MSV to be owned directly by (1) TMI and/or its parent corporation, BCE, Inc. and their Canadian shareholders, up to and including a 40% equity and/or voting interest, and (2) the Apollo Funds and their foreign limited partners and members, up to and including a 2.15% equity interest and a 3.74% voting interest. The declaratory ruling also authorized MSV to accept up to and including an additional aggregate 25% indirect foreign equity and/or voting interest from these foreign investors and other foreign investors subject to certain conditions. See *2006 MSV Order*, 21 FCC Rcd at 10218 ¶ 46.

⁸ See Letter from Henry Goldberg, Counsel for Motient Corporation, to Marlene H. Dortch, Secretary, FCC, at 2 (dated Aug. 24, 2006).

⁹ See Public Notice, Report No. TEL-01141NS (rel. April 27, 2007).

¹⁰ The Department of Justice, the Federal Bureau of Investigation, and the Department of Homeland Security did not submit comments on the MSV/SkyTerra Petition.

¹¹ See *supra* note 1.

¹² See *supra* note 2.

¹³ *De jure* and *de facto* control are defined in *Intermountain Microwave*, 12 FCC 2d 559 (1963) and the International Bureau's *Foreign Ownership Guidelines*, 19 FCC Rcd 22612, 22632-634 (Int'l. Bur. 2004), as amended by erratum, 21 FCC Rcd 6484 (Int'l Bur. 2006).

6. The Harbinger Funds have separately filed a second petition requesting a declaratory ruling under section 310(b)(4) of the Act for substantially the same authority requested in the Petition for Interim Authority, but on a permanent basis.¹⁴ The Harbinger Petitioners acknowledge that grant of interim authority pursuant to the expedited request would be subject to the ultimate outcome of their Petition for Permanent Authority for the additional purchases.¹⁵

III. DISCUSSION

A. Ownership Structure of MSV and SkyTerra

7. MSV, the holder of FCC licenses and authorizations, is a direct wholly-owned subsidiary of MSV LP, a Delaware limited partnership. MSV LP's general partner is Mobile Satellite Ventures, G.P. (MSV GP), a Delaware corporation. MSV LP's limited partners, SkyTerra and other unnamed limited partners, hold respectively, 99.29 and 0.71 percent of the equity interests in MSV LP.¹⁶ MSV LP's general partner, MSV GP, holds all of the voting interests and none of the equity interests in MSV LP.¹⁷

8. SkyTerra is a publicly-traded company organized under the laws of Delaware. SkyTerra holds 100 percent of the equity and voting interests in MSV GP, and, through MSV GP, holds all voting interest in MSV LP.¹⁸ SkyTerra's ownership, according to the supplemental ownership information submitted by Petitioners, is summarized by the table in Appendix A, Attachment 1. The foreign ownership of MSV by and through SkyTerra shareholders is shown in Attachments 2 and 3 of Appendix A.

B. The MSV/SkyTerra Petition and Summary of Analysis

9. MSV and SkyTerra seek a declaratory ruling that it is in the public interest for MSV to have indirect foreign ownership: (a) by certain SkyTerra shareholders, up to and including an aggregate 7.52 percent equity and 22.84 percent voting interests;¹⁹ and (b) through the foreign interests of certain SkyTerra shareholders, up to and including an aggregate 25.28 percent equity and 21.72 percent voting interests.²⁰ In addition, MSV and SkyTerra request a declaratory ruling that it is in the public interest for BRH Holdings GP, Ltd. to hold up to and including a 29.84 percent voting interest in MSV through the Apollo Funds' investment in SkyTerra.²¹ Finally, they request approval to have up to and including an

¹⁴ See Petition for Permanent Authority.

¹⁵ See Petition for Interim Authority at 13; Petition for Permanent Authority at 3.

¹⁶ Pursuant to additional transactions after the release of the *2006 MSV Order*, SkyTerra now holds 99.29% of MSV LP's equity and 100% of MSV GP's equity and voting interests. See January 25 Letter at 2, Attachment A.

¹⁷ *Id.* at Attachment A.

¹⁸ *Id.*.

¹⁹ See *id.* at 3, Attachments 7(a) and 8(a). These SkyTerra shareholders are: (1) Apollo Overseas Partners, L.P.; (2) Harbinger Capital Partners Master Fund I, Ltd.; (3) the Former MSV Investor I; and (4) Columbia Capital Equity Partners III (Cayman), L.P.

²⁰ *Id.* at 3, Attachments 7(b) and 8(b). These SkyTerra shareholders are: (1) the Apollo Funds; (2) the Harbinger Funds; (3) the Columbia Funds; (4) the Spectrum Funds; (5) BCE, Inc.; and (6) TerreStar Corporation, through its wholly-owned subsidiary Motient Venture Holdings, Inc.

²¹ *Id.* at 3.

additional aggregate 25 percent indirect equity and/or voting interest from foreign individuals or entities without seeking further Commission approval under section 310(b)(4).²²

10. In considering the MSV/SkyTerra Petition, request, we examine the indirect foreign ownership interests that are held in MSV pursuant to our public interest analysis under section 310(b)(4) of the Act and the Commission's foreign ownership policies adopted in the *Foreign Participation Order*.²³ As part of that analysis, we consider any national security, law enforcement, foreign policy, or trade policy concerns raised by the foreign investment.²⁴ Relying on Commission precedent, we find that the indirect foreign ownership of MSV does not raise any issues under sections 310(a) and 310(b)(1)-(b)(3) of the Act.²⁵ Our analysis in Appendix B focuses on issues raised under section 310(b)(4).

11. Section 310(b)(4) of the Act establishes a 25 percent benchmark for investment by foreign individuals, corporations, and foreign governments in entities that control U.S. common carrier radio licenses. This section also grants the Commission discretion to allow higher levels of foreign ownership if it determines that such ownership is not inconsistent with the public interest.²⁶ The calculation of foreign ownership interests under section 310(b)(4) is a two-pronged analysis in which the Commission examines separately the equity interests and the voting interests in the licensee's direct or indirect parent.²⁷ The Commission calculates the equity interest of each foreign investor in the parent and

²² *Id.* According to the Petitioners, the foreign ownership of MSV by BCE, Inc. is within the range previously approved by the Commission in the *2006 MSV Order*. January 25, 2008 Letter at 3, n.8 (citing *2006 MSV Order*, 21 FCC Rcd 10198).

²³ 47 U.S.C. § 310(b)(4); *Rules and Policies on Foreign Participation Order in the U.S. Telecommunications Market*, IB Docket Nos. 97-142, 95-22, Report and Order and Order on Reconsideration, FCC 97-398, 12 FCC Rcd 23891 (1997) (*Foreign Participation Order*), Order on Reconsideration, FCC 00-339, 15 FCC Rcd 18158 (2000).

²⁴ The Commission considers national security, law enforcement, foreign policy, and trade policy concerns when analyzing foreign investment pursuant to sections 310(b)(4) and 310(d). *Foreign Participation Order*, 12 FCC Rcd at 23918-21 ¶¶ 59-66. As noted in n.10, *supra*, the Department of Justice, the Federal Bureau of Investigation, and the Department of Homeland Security did not submit comments on the instant petition. Grant of the transfer of control applications in the *2006 MSV Order* is conditioned on SkyTerra's compliance with the commitments and undertakings contained in the Executive Branch Agreement attached to that Order. *See 2006 MSV Order*, 21 FCC Rcd at 10201-202 ¶ 9, 10218-219 ¶¶ 47-49, and 10219-220 ¶ 52.

²⁵ Section 310(a) of the Act prohibits any radio license from being "granted to or held by" a foreign government or its representative. 47 U.S.C. § 310(a). In this case, no foreign government or its representative holds any of the radio licenses. Section 310(b)(1)-(2) of the Act prohibits common carrier, broadcast and aeronautical fixed or aeronautical en route radio licenses from being "granted to or held by" aliens, or their representatives, or foreign corporations. 47 U.S.C. § 310(b)(1)-(2). We find that no alien, representative, or foreign corporation holds any of the common carrier licenses in this case. Accordingly, we find that the proposed transaction is not inconsistent with the foreign ownership provisions of section 310(a) or 310(b)(1)-(2) of the Act. *See Applications of VoiceStream Wireless Corp., Powertel, Inc., Transferors, and Deutsche Telekom AG, Transferee*, IB Docket No. 00-187, Memorandum Opinion and Order, 16 FCC Rcd 9779, 9804-9809 ¶¶ 38-48. Additionally, because the foreign investment in MSV is held through a controlling U.S. parent company, MSV LP, the proposed transaction does not trigger section 310(b)(3) of the Act, which places a 20% limit on alien, foreign corporate or foreign government ownership of entities that themselves hold common carrier, broadcast and aeronautical fixed or aeronautical en route Title III licenses. *Compare* 47 U.S.C. § 310(b)(3) *with* § 310(b)(4). *See Request for Declaratory Ruling Concerning the Citizenship Requirements of Sections 310(b)(3) and (4) of the Communications Act of 1934, as amended*, Declaratory Ruling, 103 F.C.C. 2d 511 (1985) (*Wilner & Scheiner I*), *recon. in part*, 1 FCC Rcd 12 (1986).

²⁶ 47 U.S.C. § 310(b)(4).

²⁷ *See BBC License Subsidiary L.P.*, Memorandum Opinion and Order, 10 FCC Rcd 10968, 10973 ¶ 22 (1995) (*BBC License Subsidiary*).

then aggregates these interests to determine whether the sum of the foreign equity interests exceeds the statutory benchmark. Similarly, the Commission calculates the voting interest of each foreign investor in the parent and aggregates these voting interests.²⁸ The presence of aggregated alien equity or voting interests in a common carrier licensee's parent in excess of the 25 percent benchmark triggers the applicability of section 310(b)(4)'s statutory benchmark.²⁹ Once the benchmark is triggered, section 310(b)(4) directs the Commission to determine whether the "public interest will be served by the refusal or revocation of such license."³⁰

12. In the *Foreign Participation Order*, the Commission concluded that the public interest would be served by permitting greater investment by individuals or entities from World Trade Organization (WTO) Member countries in U.S. common carrier and aeronautical fixed and aeronautical en route radio licensees.³¹ Therefore, with respect to indirect foreign investment from WTO Member countries, the Commission replaced its "effective competitive opportunities" test with a rebuttable presumption that such investment generally raises no competitive concerns.³² In evaluating requests for approval of foreign ownership interests under section 310(b)(4), the Commission uses a "principal place of business" test to determine the nationality or "home market" of foreign investors.³³

13. We examine, in Appendix B, the citizenship or "principal place of business" of the foreign individuals and entities that hold, directly or indirectly, equity or voting interests in MSV LP, the U.S. parent company of MSV, the common carrier licensee. As set forth in Appendix B, and based on our analysis of the MSV/SkyTerra Petition and the supplemental information submitted for the record,³⁴ we find that the majority of these equity and voting interests are properly ascribed to individuals or entities that are citizens of, or that principally conduct business in, WTO Member countries for purposes of our public interest analysis under section 310(b)(4) of the Act and the policies adopted in the *Foreign Participation Order*.³⁵ Accordingly, MSV is entitled to a rebuttable presumption that its indirect foreign

²⁸ See *id.* at 10972 ¶ 20, 10973-74 ¶¶ 22-25.

²⁹ See *id.* at 10973-74 ¶ 25.

³⁰ 47 U.S.C. § 310(b)(4).

³¹ See *Foreign Participation Order*, 12 FCC Rcd at 23896, 23913 ¶¶ 9, 50, 111-112.

³² *Id.*

³³ To determine a foreign entity's home market for purposes of the public interest determination under section 310(b)(4), the Commission will identify and balance the following factors: (1) the country of a foreign entity's incorporation, organization, or charter; (2) the nationality of all investment principals, officers, and directors; (3) the country in which the world headquarters is located; (4) the country in which the majority of the tangible property, including production, transmission, billing, information, and control facilities, is located; and (5) the country from which the foreign entity derives the greatest sales and revenues from its operations. *Foreign Participation Order*, 12 FCC Rcd at 23941 ¶ 116 (citing *Market Entry and Regulation of Foreign-Affiliated Entities*, Report and Order, 11 FCC Rcd 3873, 3951 ¶ 207 (1995)).

³⁴ The charts in paragraph 3 of Appendix B summarize the MSV/SkyTerra request with respect to the equity and voting interests of the various SkyTerra funds. This aggregated information is based upon more detailed information filed by MSV and SkyTerra to support their request, including Excel charts containing the granular information needed to confirm the Petitioners' calculations in the charts in Appendix B. In addition, the Petitioners provided the citizenship/principal place of business information for the foreign-organized SkyTerra shareholders and for the foreign owners of the SkyTerra shareholders. We view the information provided by MSV and SkyTerra in this proceeding as particularly useful, and we encourage other applicants to provide similarly detailed information to facilitate review of such petitions.

³⁵ See *supra* ¶ 12.

ownership does not pose a risk to competition in the U.S. market,³⁶ and we find no credible evidence in the record to rebut this presumption. We therefore conclude, pursuant to section 310(b)(4) of the Act, that it would not serve the public interest to prohibit the indirect foreign ownership of MSV in excess of the 25 percent benchmark in section 310(b)(4) of the Act.

C. Declaratory Ruling

14. This ruling permits MSV to have indirect foreign ownership by certain SkyTerra shareholders up to and including an aggregate 7.52 percent equity and 22.84 percent voting interest, and through certain SkyTerra shareholders up to and including an aggregate 25.26 percent equity and 21.72 percent voting interest. Although MSV and SkyTerra request approval for an aggregate 25.28 percent foreign equity interest, we treat the 0.02 percent equity interest held indirectly in MSV by the non-U.S., non-Canadian shareholders of BCE, Inc. as non-WTO investment because we do not have adequate information as to their citizenship or principal places of business. The ruling also approves the 29.84 percent voting interest held indirectly in MSV by BRH Holdings GP, Ltd. and permits MSV to accept up to and including an additional aggregate 25 percent indirect equity and/or voting interest from foreign individuals or entities, excluding BRH Holdings GP, Ltd., as discussed in Appendix B and as specified in the ruling below.³⁷

15. Specifically, this ruling permits MSV to be owned indirectly *by*: (1) Apollo Overseas Partners IV, L.P. up to and including a 0.63 percent equity and a 1.20 percent voting interest; (2) Harbinger Capital Partners Master Fund I, Ltd. up to and including a 4.40 percent equity and a 13.83 percent voting interest; (3) Former MSV Investor I up to and including a 0.96 percent equity and a 3.01 percent voting interest; and (4) Columbia Capital Equity Partners III (Cayman), L.P. up to and including a 1.53 percent equity and a 4.80 percent voting interest. This ruling also permits MSV to be owned indirectly *through* the following SkyTerra shareholders that have foreign investment as described in the record and in Appendix B: (5) Apollo Investment Fund IV, L.P. up to and including a 0.26 percent equity and a 0.50 percent voting interest; (6) Apollo Overseas Partners IV, L.P. up to and including a 0.63 percent equity and a 1.20 percent voting interest; (7) AP/RM Acquisition LLC up to and including a 0.02 percent equity and a 0.07 percent voting interest; (8) Harbinger Capital Partners Master Fund I, Ltd. up to and including a 3.69 percent equity and a 13.83 percent voting interest; (9) Harbinger Capital Partners Special Fund I, L.P. up to and including a 1.07 percent equity and a 3.37 percent voting interest; (10) Columbia Capital Equity Partners III (Cayman), L.P. up to and including a 0.70 percent equity and a 2.17 percent voting interest; (11) Columbia Capital Equity Partners III (QP), L.P. up to and including a 0.04

³⁶ See *Foreign Participation Order*, 12 FCC Rcd at 23896, 23913 ¶¶ 9, 50, 111-112.

³⁷ The calculations of MSV's indirect foreign ownership and the ruling issued in this order are based on information filed by Petitioners as of January 25, 2008. Petitioners have notified the Commission that, since that date, Harbinger Capital Partners Fund I, L.P. (Harbinger Partners) has purchased voting and non-voting shares of SkyTerra stock. See Letter from Tom W. Davidson and Karen Milne, Counsel for SkyTerra, to Marlene H. Dortch, Secretary, FCC (dated Feb. 27, 2008) (February 27, 2008 Letter). Petitioners state it is their understanding that Harbinger Partners – which is distinct from the Harbinger Funds referenced in this *Order and Declaratory Ruling* – is owned, organized and controlled 100% domestically. According to Petitioners, Harbinger Partners' acquisition of SkyTerra non-voting stock reduced the total amount of foreign equity in SkyTerra and had no effect on foreign voting in SkyTerra. Harbinger Partners acquired SkyTerra voting stock on the open market. SkyTerra states that, as a result, it cannot determine whether Harbinger Partners purchased the voting shares from U.S. or foreign SkyTerra shareholders. Even assuming, however, that Harbinger Partners acquired the voting shares from U.S. individuals or entities, Petitioners note that the share purchase would have no effect on the foreign ownership of SkyTerra or MSV. Given that the new Harbinger investment reduced MSV's indirect foreign equity interests and did not result in any increase in its indirect foreign voting interests, we base our analysis and ruling on the ownership information provided to us by SkyTerra as of January 25, 2008.

percent equity and a 0.14 percent voting interest; (12) Spectrum Equity Investors IV, L.P. up to and including a 0.14 percent equity and a 0.44 percent voting interest; and (13) TerreStar Corporation (through Motient Venture Holdings, Inc.) up to and including a 18.72 percent equity interest.³⁸ We also permit BRH Holdings GP, Ltd. to hold up to and including a 29.84 percent voting interest in MSV through the Apollo Funds' investment in SkyTerra.

16. MSV may accept up to and including an additional aggregate 25 percent indirect equity and/or voting interests from these foreign investors and other foreign investors without seeking prior Commission approval under section 310(b)(4) subject to the following conditions. First, MSV shall obtain prior approval before any foreign individual or entity acquires individually an indirect equity and/or voting interest in MSV in excess of 25 percent, with the exception of BRH Holdings GP, Ltd., which shall not, however, acquire any additional indirect voting interest in MSV without prior Commission approval. Second, for purposes of calculating the aggregate 25 percent amount, MSV shall include the foreign equity and voting interests attributed in this Order to investors from non-WTO Member countries (in the aggregate, 7.49 percent equity and 7.79 percent voting interests). Third, MSV shall treat as unidentified, non-WTO investment any future investment by TerreStar until MSV demonstrates that the equity and voting interests held indirectly in MSV through TerreStar are properly ascribed to the United States or another WTO Member country. Our grant of the MSV/SkyTerra Petition is without prejudice to any enforcement action by the Commission for non-compliance with the Act or the Commission's rules as a result of MSV exceeding the foreign ownership levels approved in the 2006 *MSV Order*. We emphasize that, as a Commission licensee, MSV has an affirmative duty to continue to monitor its foreign equity and voting interests and to calculate these interests consistent with the attribution principles enunciated by the Commission.³⁹

D. Interim Authority for Harbinger Petitioners

17. As described at paragraphs 5-6, *supra*, the Harbinger Funds filed their Petition for Interim Authority under section 310(b)(4) of the Act to increase their indirect ownership in MSV through additional purchases of SkyTerra shares on the open market. The Harbinger Funds followed up by filing their Petition for Permanent Authority under section 310(b)(4) of the Act, seeking substantially the same authority requested in the Petition for Interim Authority, but on a permanent basis. In support of their Petition for Interim Authority, the Harbinger Petitioners state that expedited approval is necessary to allow the Harbinger Funds to take advantage of "near term opportunities to purchase additional shares of SkyTerra stock through open market transactions" to increase their current SkyTerra investment.⁴⁰ If the shares are not purchased when they become available in the open market, the Harbinger Petitioners contend that they could lose a business opportunity that would harm their business plans.⁴¹ The Harbinger Petitioners also note that the Commission has detailed ownership information regarding the

³⁸ In addition to approval for the ownership in MSV by the Harbinger Funds pursuant to the grant of the MSV/SkyTerra Petition, we have separately granted interim authority in this *Order and Declaratory Ruling* for Harbinger Petitioners to increase their ownership in MSV, not to exceed 49.99 percent equity interest and 49.99 percent voting interest, subject to and without prejudice to any action the Commission may take on the separate Harbinger Funds petition requesting a declaratory ruling under section 310(b)(4) for permanent authority. See *infra* ¶¶ 17-19.

³⁹ *Verizon Communications, Inc., Transferor and America Movil, S.A., DE C.V., Transferee, Application for Authority to Transfer Control of Telecomunicaciones de Puerto Rico, Inc. (TELPRI)*, WT Docket No. 06-113, Memorandum Opinion and Order and Declaratory Ruling, FCC 07-43, 22 FCC Rcd 6195, 6225 ¶ 68 (2007).

⁴⁰ See Petition for Interim Authority at 10.

⁴¹ *Id.*

Harbinger Funds in connection with the petition for declaratory ruling filed by MSV and SkyTerra addressed in this *Order and Declaratory Ruling*.⁴²

18. On balance, we believe the public interest would not be served by denying the Petition for Interim Authority. The ownership and control of the Harbinger Funds is set forth in Appendix B. As we conclude there, we find – based on the information provided by the Harbinger Petitioners and by MSV and SkyTerra – that the Funds have their principal places of business in the United States or the Cayman Islands and that all but a *de minimis* portion of their equity investment is properly ascribed to the United States and other WTO Member countries. We believe that granting this Petition for Interim Authority under these particular circumstances would facilitate the customary operations of the capital markets and ensure that investment is made in accordance with the requirements of section 310(b)(4) of the Act. Furthermore, fostering unnecessary barriers to entry would appear to run contrary to the Commission’s open entry policies adopted in the *Foreign Participation Order*.⁴³ We therefore grant the Petition for Interim Authority to allow the Harbinger Funds to increase their aggregate indirect ownership in MSV through additional purchases of SkyTerra stock on the open market, not to exceed a non-controlling (*de jure* or *de facto*) 49.99 percent equity and 49.99 percent voting interest.⁴⁴ In no event shall the equity or voting interest held by the Harbinger Funds, when aggregated with interests held by any commonly-controlled funds, exceed 49.99 percent.

19. Our grant of the Petition for Interim Authority will avoid regulatory interference in the normal processes of capital markets, while ensuring the Commission has the opportunity to conduct an in-depth review of the issues raised by the Petition for Permanent Authority filed by the Harbinger Petitioners, after the conclusion of the appropriate notice and comment procedures.⁴⁵ This interim action is subject to and without prejudice to any action the Commission may take on the separate Petition for Permanent Authority to increase the ownership by the Harbinger Funds in MSV. Similarly, though the Department of Justice, the Federal Bureau of Investigation, and the Department of Homeland Security did not submit comments on the Petition for Interim Authority, those agencies requested the opportunity to review the Petition for Permanent Authority from a national security perspective. As a result, the Commission’s action in this *Order and Declaratory Ruling* does not foreclose the possibility that the Harbinger Funds may have to alter their investment in MSV or SkyTerra at a later date to come into compliance with future Commission decisions.

IV. ORDERING CLAUSES

20. Accordingly, IT IS ORDERED that, pursuant to sections 4(i), 4(j) and 310(b)(4) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 310(b)(4), and section 1.2 of the Commission’s rules, 47 C.F.R. § 1.2, the Petition for Declaratory Ruling filed by Mobile Satellite Ventures Subsidiary LLC and SkyTerra Communications, Inc. IS GRANTED to the extent specified in this *Order and Declaratory Ruling*.

⁴² See Petition for Interim Authority at 12. See also *infra* Appendix B, ¶¶ 9-14.

⁴³ *Foreign Participation Order*, 12 FCC Rcd 23891.

⁴⁴ We caution the Harbinger Petitioners that they are required to seek and obtain prior Commission approval before the Harbinger Funds, and any common-controlled funds, obtain any level of shareholdings or other rights in SkyTerra sufficient to confer on them, as a group, *de jure* or *de facto* control of MSV and SkyTerra. Our grant of the Petition for Interim Authority should not be construed as approving any such transfer of control to the Harbinger Funds.

⁴⁵ In that regard, we are unaware of a prior decision in which the Commission has addressed a petition filed by an investor seeking a foreign ownership ruling under section 310(b)(4) of the Act.

21. IT IS FURTHER ORDERED that, pursuant to sections 4(i), 4(j) and 310(b)(4) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), (j), 310(b)(4), and section 1.2 of the Commission's rules, 47 C.F.R. § 1.2, the Petition for Interim Authority filed by the Harbinger Petitioners IS GRANTED subject to and without prejudice to any action the Commission may take on the Harbinger Petitioners' Petition for Permanent Authority (ISP-PDR-20080129-00002) and to the extent otherwise specified in this *Order and Declaratory Ruling*.

22. IT IS FURTHER ORDERED that this *Order and Declaratory Ruling* SHALL BE EFFECTIVE upon release. Petitions for reconsideration under section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, may be filed within thirty days of the date of public notice of this order.

Federal Communications Commission

Marlene H. Dortch
Secretary

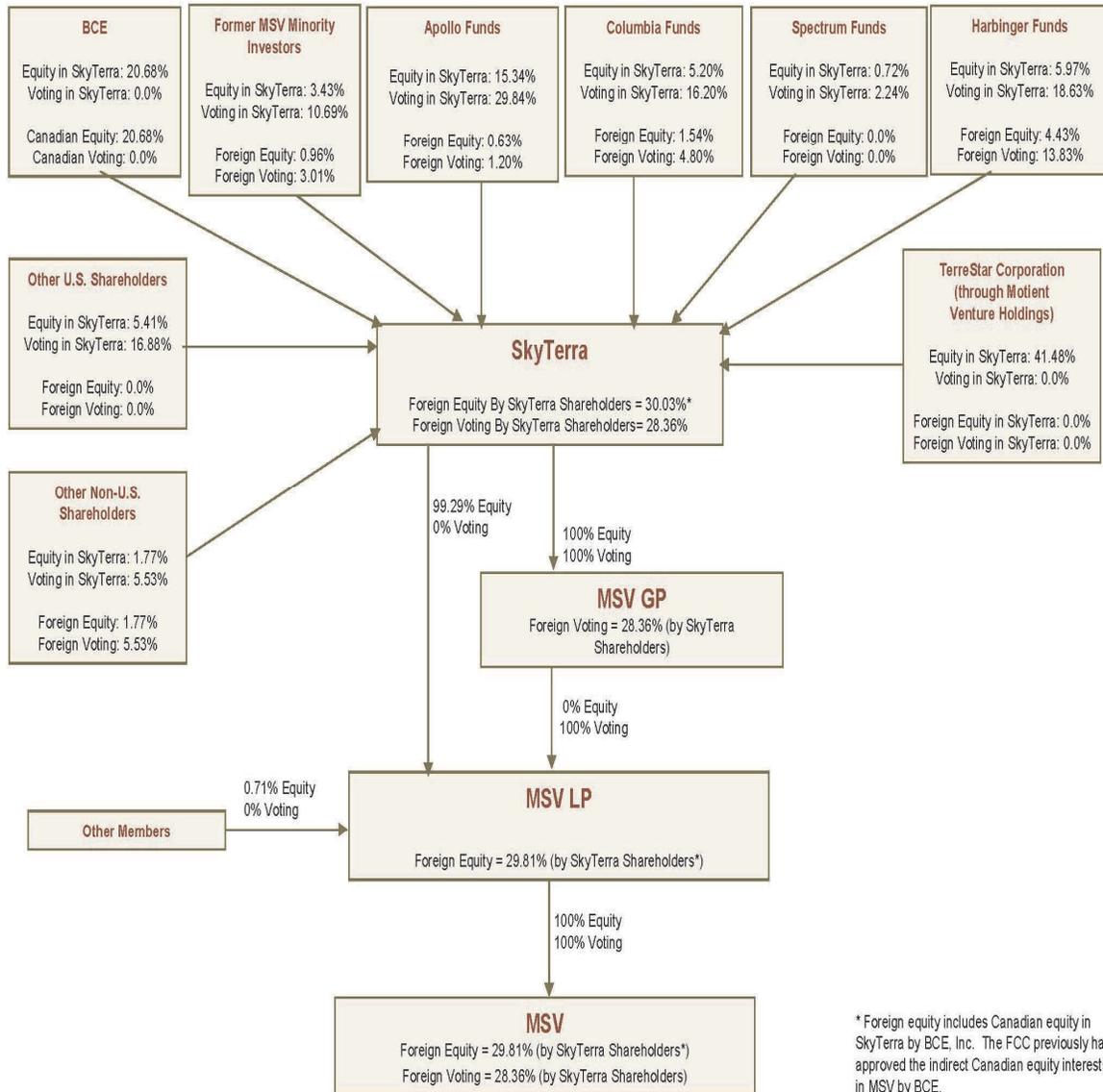
APPENDIX A

SkyTerra Ownership

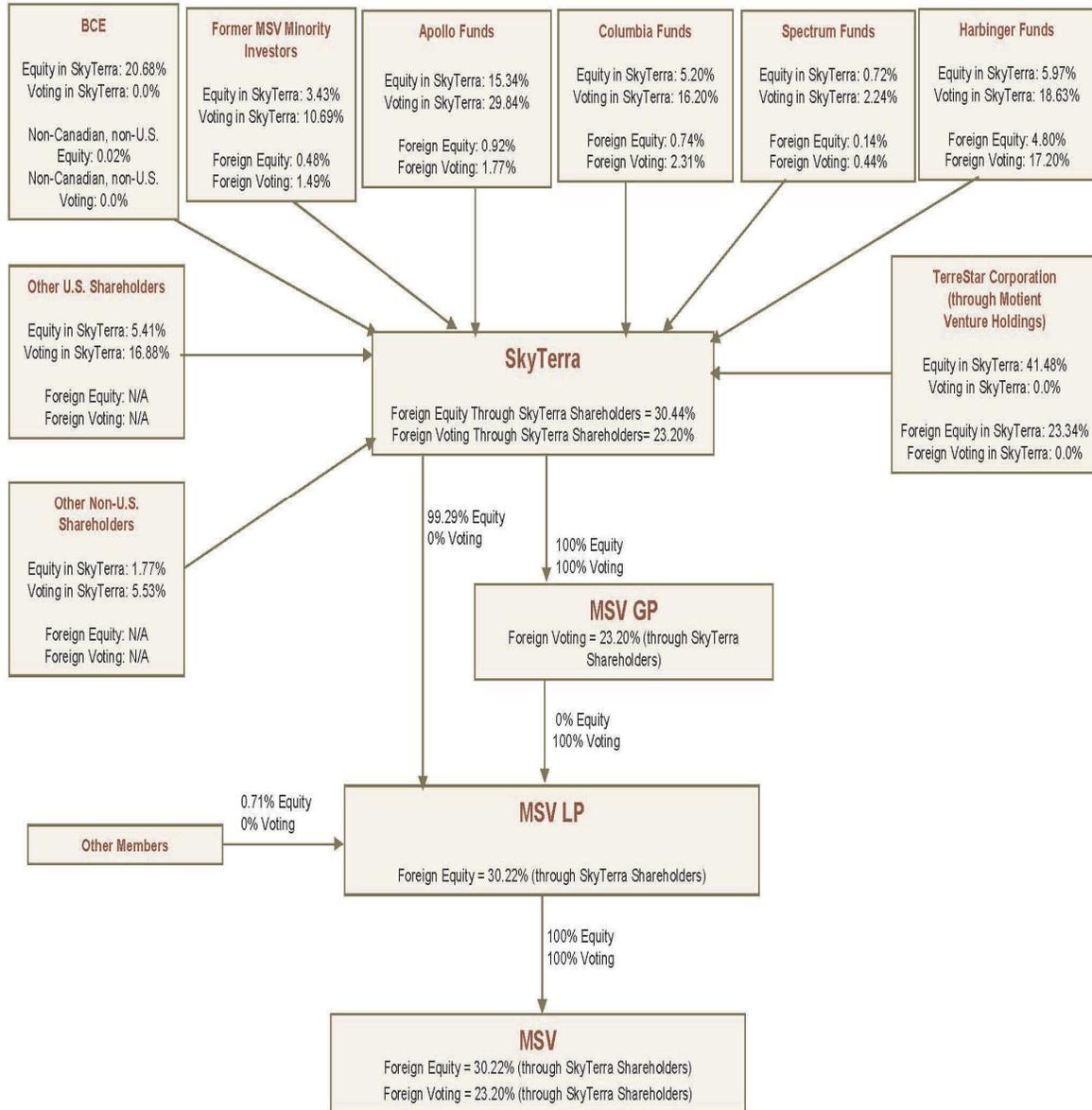
(Attachment 1)

Shareholder(s)	Aggregate Equity Interest in SkyTerra	Aggregate voting interest in SkyTerra
5 private equity funds affiliated with Apollo Management ("Apollo Funds")	15.34%	29.84%
5 private equity funds affiliated with Columbia Capital ("Columbia Funds")	5.20%	16.20%
3 private equity funds affiliated with Spectrum Equity ("Spectrum Funds")	0.72%	2.24%
2 Private Investment Funds ("Harbinger Funds")	5.97%	18.63%
Former Minority Investors of MSV LLC	3.43%	10.69%
BCE, Inc.	20.68%	0.00%
TerreStar Corporation (through Motient Venture Holdings)	41.48%	0.00%
Other Non-U.S. shareholders	1.77%	5.53%
Other U.S. shareholders	5.41%	16.88%
Total	100%	100%

Attachment 2:
Foreign Ownership of MSV by the SkyTerra Shareholders



Attachment 3:
Foreign Ownership of MSV through the SkyTerra Shareholders



APPENDIX B

Section 310(b)(4) Foreign Ownership Analysis

1. We evaluate in this Appendix the foreign ownership interests held in MSV LP, the U.S. parent company of MSV, pursuant to section 310(b)(4) of the Act.⁴⁶ The vast majority of MSV LP's equity interests (99.29%) and all of its voting interests are held by SkyTerra, a publicly-traded company organized in Delaware. Thus, we calculate below the percentage of foreign equity and voting interests held in MSV LP by and through certain SkyTerra shareholders.⁴⁷ We then examine whether these foreign equity and voting interests are properly ascribed to individuals that are citizens of, or entities that have their principal places of business in, WTO Member countries.

2. We conducted a two-tier "by and through" analysis of the foreign ownership of MSV LP. For purposes of our review, a "by shareholder" is a foreign investor that holds an equity and/or voting interest directly in SkyTerra. A "through shareholder" is a foreign investor that holds an equity and/or voting interest indirectly in SkyTerra as a result of the foreign investor's ownership interest in a SkyTerra shareholder.⁴⁸ In support of its Petition, Petitioners submitted the following information: (1) the percentage of equity and voting interests held directly in SkyTerra by its foreign shareholders,⁴⁹ and (2) the percentage of foreign equity and voting interests, broken out by WTO Member and non-WTO Member countries, held indirectly in SkyTerra through its shareholders.⁵⁰ Petitioners also submitted for the record the corresponding calculations of foreign equity and voting interests held in MSV LP by and through the SkyTerra shareholders.⁵¹

3. The charts below summarize the foreign equity and voting interests of certain SkyTerra shareholders for which Petitioners are requesting authorization.

Ownership Interests Held by Certain SkyTerra Shareholders in MSV LP		
Investor/Shareholder	Foreign Equity Interest	Foreign Voting Interest
Funds Affiliated with Apollo Management	0.63%	1.20%

⁴⁶ The methodology that we use to calculate foreign equity and voting interests in common carrier licensees under section 310(b) of the Act is explained in the *Foreign Ownership Guidelines*, 19 FCC Rcd 22612, 22624-22631 (Int'l Bur. 2004). We recommend the use of the ownership charts in Appendix A as a roadmap for our section 310(b)(4) analysis of the foreign ownership interests held in MSV LP, the U.S. parent company of common carrier licensee MSV.

⁴⁷ Petitioners do not request specific approval for limited partners that hold the remaining 0.71% equity interest in MSV LP. Petitioners request approval for MSV LP's foreign ownership by and through certain shareholders of SkyTerra.

⁴⁸ The "by" SkyTerra shareholders are (1) Apollo Overseas Partners IV, L.P.; (2) Harbinger Capital Partners Master Fund I, Ltd.; (3) Columbia Capital Equity Partners III (Cayman), L.P.; and (4) Former MSV Minority Investor I. The "through" SkyTerra shareholders are (1) the Apollo Funds (Apollo Investment Fund IV, L.P., Apollo Overseas Partners IV, L.P., AP/RM Acquisition LLC, AIF IV/RRR LLC; and ST/RRRR LLC); (2) the Harbinger Funds (Harbinger Capital Partners Masters Fund I, Ltd. and Harbinger Capital Partners Special Fund, L.P.); (3) Columbia Capital Equity Partners III (QP), L.P. and Columbia Capital Equity Partners III (Cayman), L.P.; (3) Spectrum Equity Investors IV, L.P. and Spectrum Equity Investors Parallel IV, L.P.; (5) BCE, Inc.; and (6) TerreStar Corporation, through its wholly-owned subsidiary Motient Venture Holdings, Inc. The specific foreign ownership interests for which Petitioners request approval are listed in the charts in ¶ 3.

⁴⁹ See January 25, 2008 Letter, Attachments A, 7(a). The percentage of equity and voting interests held directly in SkyTerra by its foreign shareholders is also illustrated in this Order in Appendix A, Attachment 2.

⁵⁰ See January 25, 2008 Letter, Attachments A, 7(b). The percentage of foreign equity and voting interests held indirectly in SkyTerra through its shareholders is also illustrated in this Order in Appendix A, Attachment 3.

⁵¹ See January 25, 2008 Letter, Attachments 8(a) and 8(b).

Funds Affiliated with Harbinger Capital Partners	4.40%	13.83%
Former MSV Minority Investors	0.96%	3.01%
Funds Affiliated with Columbia Capital	1.53%	4.80%
TOTAL WTO	7.52%	22.84%

Ownership Interests Held through Certain SkyTerra Shareholders in MSV LP		
Investor/Shareholder	Foreign Equity Interest	Foreign Voting Interest
Funds Affiliated with Apollo Management ⁵²	0.91%	1.77%
Funds Affiliated with Harbinger Capital Partners	4.76%	17.20%
Funds Affiliated with Columbia Capital	0.73%	2.31%
Funds Affiliated with Spectrum Equity	0.14%	0.44%
BCE, Inc.	0.02%	
TerreStar Corporation through Motient Venture Holdings	18.72%	0.00%
TOTAL WTO	25.28%	21.72%

4. As we discuss below, we find, based on our review of the record, that: (1) the total indirect foreign equity and voting interests held in MSV LP *by* certain SkyTerra shareholders is 7.52% and 22.84%, all of which are investments from WTO Member countries; and (2) the total indirect foreign equity and voting interests held in MSV LP *through* certain SkyTerra shareholders for which Petitioners seek approval is 25.28 percent and 21.72 percent, respectively, and we find that nearly all of these foreign equity and voting interests are properly ascribed to WTO Member countries. We also find that the indirect voting interest held by BRH Holdings GP, Ltd., a foreign-organized entity affiliated with the Apollo Funds, is 29.84 percent and is properly ascribed to a WTO Member country. Additionally, we find that the aggregate non-WTO equity and voting interests held indirectly in MSV LP are 7.49 percent and 7.79 percent, respectively.⁵³

⁵² This chart does not reflect the 29.84% foreign voting interest attributed to BRH Holdings GP, Ltd., a Cayman Islands company through which the Apollo Fund principals hold their controlling interests in the Funds. Following a reorganization of the Apollo Funds, Petitioners amended their initial request for declaratory ruling to include approval for BRH Holdings GP, Ltd. to hold up to and including a 29.84% voting interest in MSV LP (the aggregate voting interest held by the Apollo Funds in SkyTerra, and, in turn, in MSV LP). *See* January 25, 2008 Letter at 3; January 29, 2008 Letter (providing a revised organizational chart of the Apollo Funds).

⁵³ The calculations of MSV's indirect foreign ownership and the ruling issued in this order are based on information filed by Petitioners as of January 25, 2008. Petitioners have notified the Commission that, since that date, Harbinger Capital Partners Fund I, L.P. (Harbinger Partners) has purchased voting and non-voting shares of SkyTerra stock. *See* Letter from Tom W. Davidson and Karen Milne, Counsel for SkyTerra, to Marlene H. Dortch, Secretary, FCC (dated Feb. 27, 2008) (February 27, 2008 Letter). Petitioners state it is their understanding that Harbinger Partners is owned, organized and controlled 100% domestically. According to Petitioners, Harbinger Partners' acquisition of (continued....)

5. Foreign Equity and Voting Interests Held By and Through the Apollo Funds: The Apollo Funds that hold shares of SkyTerra stock are Apollo Investment Fund IV, L.P. (AIF IV), Apollo Overseas Partners IV, L.P. (Apollo Overseas Partners), AIF IV/RRR LLC, AP/RM Acquisition LLC, and ST/RRRR LLC.⁵⁴ The Apollo Funds hold collectively 15.34 percent of the equity interests and 29.84 percent of the voting interests of SkyTerra.⁵⁵ According to the Petitioners, each of the Apollo Funds is organized in the United States, with the exception of Apollo Overseas Partners IV, L.P., which is a Cayman Islands limited partnership.⁵⁶ AIF IV and Apollo Overseas Partners are directly controlled by Apollo Advisors IV, L.P. in its capacity as their managing general partner. Through separate management agreements, Apollo Advisors IV, L.P. has delegated to Apollo Management IV, L.P., management, operation and control of AIF IV and Apollo Overseas Partners. The organizational documents of AIF IV/RRR LLC, AP/RM Acquisition LLC, and ST/RRRR LLC also appoint Apollo Management IV, L.P. as manager of those entities.⁵⁷ Three U.S. citizens ultimately control the Apollo Funds through Apollo Advisors IV, L.P., Apollo Management IV, L.P., and a series of additional intermediate entities and management arrangements. All of these intermediate entities are organized in the United States with the exception of BRH Holdings GP, Ltd., a Cayman Islands exempted company.⁵⁸

6. Because Apollo Overseas Partners is a foreign-organized company, we calculate the equity and voting interests that it holds indirectly in MSV LP as a result of Apollo Overseas Partners' direct shareholdings in SkyTerra. According to information provided by Petitioners, Apollo Overseas Partners holds directly 0.63 percent of the equity interests and 1.20 percent of the voting interests in SkyTerra, resulting in Apollo Overseas Partners holding an indirect equity interest of 0.63 percent (0.63% x 99.29%) and an indirect voting interest of 1.20 percent (1.20% x 100%) in MSV LP.⁵⁹

(Continued from previous page) _____

SkyTerra non-voting stock reduced the total amount of foreign equity in SkyTerra and had no effect on foreign voting in SkyTerra. Harbinger Partners acquired SkyTerra voting stock on the open market. SkyTerra states that, as a result, it cannot determine whether Harbinger Partners purchased the voting shares from U.S. or foreign SkyTerra shareholders. Even assuming, however, that Harbinger Partners acquired the voting shares from U.S. individuals or entities, Petitioners note that the share purchase would have no effect on the foreign ownership of SkyTerra or MSV. Given that the new Harbinger investment reduced MSV's indirect foreign equity interests and did not result in any increase in its indirect foreign voting interests, we base our analysis and ruling on the ownership information provided to us by SkyTerra as of January 25, 2008.

⁵⁴ AIF IV holds a 12.45% equity and a 23.40% voting interest in SkyTerra. The remainder of the equity and voting interests in SkyTerra are as follows: Apollo Overseas Partners (0.63% equity and 1.20% voting); AIF IV/RRR LLC (1.25% equity and 2.99% voting); AP/RM Acquisition LLC (0.44% equity and 1.38% voting); and ST/RRRR LLC (0.56% equity and 0.87% voting). See January 25, 2008 Letter, Attachment 7(a).

⁵⁵ See January 25, 2008 Letter, Attachment A.

⁵⁶ See January 25, 2008 Letter, Attachment 7(a). See also WC Docket No. 06-106, Letter from Tom Davidson, Counsel for SkyTerra Communications, Inc. to Marlene Dortch, Secretary, FCC, dated August 22, 2006 (August 22, 2006 Letter) at 1-2; WC Docket No. 06-106, Letter from Tom Davidson, Counsel for SkyTerra Communications, Inc. and Henry Goldberg, Counsel for Motient Corporation, to Marlene Dortch, Secretary, FCC, dated August 31, 2006 (August 31, 2006 Letter).

⁵⁷ See October 5, 2007 Letter, n.1.

⁵⁸ See January 29, 2008 Letter that provides an organizational chart of the Apollo Funds. See also October 5, 2007 Letter at 5, n.2., Attachment 3. Since the 2006 MSV Order, the control structure of the Apollo Funds has changed as a result of a reorganization (Apollo Reorganization). Prior to the Apollo Reorganization, Mr. Leon Black indirectly controlled the Apollo Funds. Control of the Apollo Funds is now exercised equally by Apollo principals Leon Black, Marc Rowan, and Joshua Harris. Additional intermediate entities, including BRH Holdings GP, Ltd., have been inserted into the chain of ownership of the Apollo Funds.

⁵⁹ See January 25, 2008 Letter, Attachments A, 8(a).

7. We find that the indirect 0.63 percent equity interest and indirect 1.20 percent voting interest held in MSV LP by Apollo Overseas Partners are properly treated as investment from a WTO Member country for purposes of our public interest analysis under section 310(b) (4) of the Act and the Commission's foreign ownership policies adopted in the *Foreign Participation Order*. Apollo Overseas Partners is organized and has its world headquarters in the Cayman Islands. The general partner and manager of Apollo Overseas Partners — Apollo Advisors IV, L.P. and Apollo Management IV, L.P., respectively — are organized in the United States and are ultimately controlled by three U.S. citizens through a series of entities organized for the most part in the United States.⁶⁰ Petitioners provide information to demonstrate that all of the economic interests in Apollo Overseas Partners are attributable to the United States and other WTO Member countries.⁶¹ We find on the basis of this information that Apollo Overseas Partners has its principal place of business in the United States or the Cayman Islands, which we consider to be a WTO Member.⁶² The record also supports a finding that the remaining Apollo Funds, which are organized in the United States, have their principal places of business in the United States.⁶³

8. Turning next to foreign investment held in MSV LP through the Apollo Funds, Petitioners assert that foreign individuals and entities presently account for 99.73 percent of the equity investment in Apollo Overseas Partners, 2.12 percent of the equity investment in AIF IV, 5.09 percent of the equity investment in AP/RM Acquisition LLC, 0.07 percent of the equity investment in AIF IV/RRR LLC, and 0.22 percent of the equity investment in ST/RRRR LLC.⁶⁴ We calculate that these foreign investors hold indirectly, on an aggregate basis, a 0.91 percent equity interest and a 1.77 percent voting interest in SkyTerra through the Apollo Funds,⁶⁵ which amounts to an aggregate 0.91 percent indirect

⁶⁰ As noted, BRH Holdings GP, Ltd. is the only foreign-organized entity in the Apollo vertical ownership chain. See ¶ 5.

⁶¹ Apollo Advisors IV, L.P. holds 0.05% of the equity interests in Apollo Overseas Partners. See November 6, 2007 Letter, Attachment 2. Apollo Advisors IV L.P.'s limited partners hold 100 percent of its equity interests, and all of its limited partners are U.S. citizens. See January 29, 2008 Letter (Apollo organizational chart) and August 31, 2006 Letter at 2. Apollo Overseas Partners' remaining equity is held by limited partners comprised of (1) non-U.S. banks, pension/employee benefit plans, insurance companies organized in France and the Cayman Islands (39.07%); (2) non-U.S. foundations/endowment/trusts organized in the British Virgin Islands and Cayman Islands (40.91%); (3) other institutional investors organized in, and with a principal place of business in, the United States (0.22%); and (4) other institutional investors with a principal place of business in the Netherlands, British Virgin Islands, and Cayman Islands (19.75%). See November 6, 2007 Letter, Attachment 2.

⁶² See *Cable & Wireless USA, Inc., Application for Authority to Operate as a Facilities-Based Carrier in Accordance with the Provisions of Section 63.18(e) of the Rules Between the United States and Bermuda*, Order, Authorization and Certificate, 15 FCC Rcd 3050, 3052 (Int'l Bur. 2000); *Bell Atlantic New Zealand Holdings, Inc. and Pacific Telecom, Inc., Transferee*, Order and Authorization, DA 03-3563, 18 FCC Rcd 23140, ¶ 25, n.80 (Int'l Bur., WCB, WTB 2003) (relying on an opinion provided by the U.S. Department of State to conclude that the 1994 Marrakesh Agreement Establishing the World Trade Organization applies to the United Kingdom's overseas territories, including the Cayman Islands).

⁶³ All of the Apollo Funds share the same control structure. See *supra* ¶ 5. Petitioners provide information to demonstrate that all of the economic interests in the remaining Apollo Funds are attributable to the United States and other WTO Member countries. See November 6, 2007 Letter, Attachment 2. See also *infra* ¶ 8.

⁶⁴ See January 25, 2008 Letter, Attachment 7(b).

⁶⁵ See January 25, 2008 Letter, Attachment 8(b). We calculate the foreign equity and foreign voting interests held in SkyTerra through each of these funds as follows: Apollo Overseas Partners holds a 0.63% equity interest and a 1.20% voting interest in SkyTerra and foreign individuals and entities hold an aggregate 99.73% equity and voting interest in Apollo Overseas Partners. Therefore, the foreign equity interest is 0.63% (0.63% x 99.73%) and the (continued....)

foreign equity interest and 1.77 percent indirect foreign voting interest held in MSV LP through the Apollo Funds.⁶⁶ Accordingly, we attribute to these foreign investors of the Apollo Funds an aggregate 0.91 percent indirect equity interest and 1.77 percent indirect voting interest held in MSV LP through the SkyTerra shareholders. Based upon the record and the representations made by the Petitioners, we find that all of these foreign equity and voting interests are properly ascribed to WTO Member countries.⁶⁷ As a final matter, we attribute to BRH Holdings GP, Ltd., a Cayman Islands company, a 29.84 percent voting interest in SkyTerra through the Apollo Funds. The 29.84% voting interest that we attribute to BRH Holdings GP, Ltd. represents the aggregate voting interest held by the Apollo Funds in SkyTerra.⁶⁸ As previously discussed, BRH Holdings GP, Ltd. is one of the intermediate entities through which the three Apollo principals, all U.S. citizens, control the Apollo Funds.⁶⁹ BRH Holdings GP, Ltd. is wholly owned by the three Apollo principals, its world headquarters is located in the United States, and its officers and directors are all citizens of the United States. We therefore find that BRH Holdings GP, Ltd. has its principal place of business in the United States or the Cayman Islands, and that its 29.84 percent voting interest in SkyTerra and, in turn, in MSV LP, is properly ascribed to a WTO Member country.

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foreign voting interest is 1.20% (1.20% x 99.73%). AIF IV holds a 12.45% equity interest and a 23.40% voting interest in SkyTerra and foreign individuals and entities hold an aggregate 2.12% equity and voting interest in AIF IV which calculates to a 0.26% foreign equity interest (12.45% x 2.12%) and a 0.50% foreign voting interest (23.40% x 2.12%) in AIF IV. AP/RM Acquisition LLC holds a 0.44% equity interest and a 1.38% voting interest in SkyTerra and foreign individuals and entities hold an aggregate 5.09% equity and voting interest in AIF IV. Therefore, the foreign equity and foreign voting interests held in SkyTerra through AP/RM are 0.02% (0.44% x 5.09%) and 0.07% (1.38% x 5.09%), respectively. AIF IV/RRR LLC holds a 1.25% equity interest and a 2.99% voting interest in SkyTerra and foreign individuals and entities hold an aggregate 0.07% equity and voting interest in AIF IV/RRR LLC, which calculates to a 0.00% foreign equity interest (1.25% x 0.07%) and a 0.00% foreign voting interest (2.99% x 0.07%) in AIF IV/RRR LLC. ST/RRRR LLC holds a 0.56% equity interest and a 0.87% voting interest in SkyTerra and foreign individuals and entities hold an aggregate 0.22% equity and voting interest in ST/RRRR LLC, which calculates to a 0.00% foreign equity interest (0.56% x 0.22%) and a 0.00% foreign voting interest (0.87% x 0.22%) in ST/RRRR LLC. Thus, foreign individuals and entities hold an aggregate 0.91% equity interest and a 1.77% voting interest in SkyTerra through their direct equity and voting interests in these funds.

⁶⁶ We calculate the foreign equity interests in MSV LP by multiplying the foreign equity interest held through each fund in SkyTerra by 99.29%, which is SkyTerra's equity investment in MSV LP. The foreign voting interests are multiplied by 100%, which is SkyTerra's voting interest in MSV. Therefore, foreign investors of Apollo Overseas Partners hold an aggregate 0.63% equity (0.63% x 99.29%) and 1.20% voting interest (1.21% x 100%) in MSV LP through SkyTerra. Foreign investors of AIF IV hold an aggregate 0.26% equity (0.26% x 99.28%) and 0.50% voting interest (0.50% x 100%) in MSV LP through SkyTerra. Finally, foreign investors of AP/RM Acquisition LLC hold a 0.02% equity (0.02% x 99.29%) and a 0.07% voting interest (0.07% x 100%) in MSV LP through SkyTerra. (As we calculated *supra* n.20, foreign investment in SkyTerra through AIF IV/RRR LLC and ST/RRRR LLC rounds to 0.00%.) Thus, the aggregate foreign equity interest is 0.91% and the aggregate foreign voting interest is 1.77%.

⁶⁷ See November 6, 2007 Letter, Attachment 2. As discussed *supra* n.16, the foreign investors in Apollo Overseas Partners are institutional investors that have their principal places of business in France, the Cayman Islands, the British Virgin Islands, and the Netherlands. The foreign investors in AIF IV consist of institutional investors with their principal places of business in Luxembourg, the United Kingdom, Ireland, British Virgin Islands, Cayman Islands, the Netherlands and Guernsey. According to Petitioners, the sole foreign investor in AP/RM Acquisition LLC, AIF IV/RRR LLC, and ST/RRRR LLC is Apollo Overseas Partners, which is organized in the Cayman Islands and which we have found to have its principal place of business in the United States or the Cayman Islands. See *supra* ¶ 7.

⁶⁸ See *supra* ¶ 5.

⁶⁹ See *id.*

9. Foreign Equity and Voting Interests Held By and Through the Harbinger Funds:

Harbinger Capital Partners Masters Fund I, Ltd. (Harbinger Master Fund Cayman), a Cayman Islands exempted company, and Harbinger Capital Partners Special Situations Fund, L.P. (Harbinger Special Fund), a Delaware limited partnership (together, the “Harbinger Funds”) hold collectively 5.97 percent of the equity and 18.63 percent of the voting interest of SkyTerra.⁷⁰ Harbinger Master Fund Cayman holds 4.43 percent of the equity interests and 13.83 percent of the voting interests in SkyTerra.⁷¹ Harbinger Special Fund holds 1.54 percent of the equity interests and 4.80 percent of the voting interests in SkyTerra.⁷² Harbinger Master Fund Cayman is controlled by Harbinger Capital Partners Offshore Fund I, Ltd. (Offshore Fund), a Cayman Islands exempted corporation.⁷³ The investment principals, officers and directors of Harbinger Master Fund Cayman and Offshore Fund are citizens of the United States, Ireland and the United Kingdom.⁷⁴ Harbinger Special Fund is controlled by its general partner, Harbinger Capital Partners Special Situations GP, LLC (Harbinger Special Situations GP), a Delaware limited liability company.⁷⁵ Harbinger Special Situations GP has management control over the Harbinger Special Fund and is ultimately controlled by individuals that are citizens of the United States.

10. Because Harbinger Master Fund Cayman is a foreign-organized company, we calculate the equity and voting interests that it holds indirectly in MSV LP as a result of Harbinger Master Fund Cayman’s direct shareholdings in SkyTerra. According to information provided by Petitioners, Harbinger Master Fund Cayman holds 4.43 percent of the equity interests and 13.83 percent of the voting interests in SkyTerra.⁷⁶ We therefore calculate that Harbinger Master Fund Cayman holds indirectly 4.40 percent of the equity (4.43% x 99.29%) and 13.83 percent of the voting (13.83% x 100%) interests in MSV LP.⁷⁷ Based on our review of the record, we find that the indirect 4.40 percent equity and indirect 13.83 percent voting interests held in MSV LP by Harbinger Master Fund Cayman are properly treated as investment from a WTO Member country for purposes of our public interest analysis under section 310(b)(4) of the Act and the Commission’s foreign ownership policies adopted in the *Foreign Participation Order*. Harbinger Master Fund Cayman and its controlling stakeholder, Offshore Fund, are both organized in the Cayman Islands, which we consider to be a WTO Member. Their investment principals, officers, and directors are citizens of WTO Member countries (the United States, Ireland and the United Kingdom),

⁷⁰ See January 25, 2008 Letter, Attachment A.

⁷¹ See January 25, 2008 Letter, Attachment 7(a).

⁷² See January 25, 2008 Letter, Attachment 7(a).

⁷³ According to the Petitioners, the Offshore Fund holds 83.90% of the voting shares of Harbinger Master Fund Cayman. January 25, 2008 Letter, Attachment 7(b)(Notes).

⁷⁴ See Petition, Attachment D. Harbinger Master Fund Cayman has a board of directors that has delegated broad investment management authority under an investment agreement to Harbinger Capital Partners Offshore Manager, LLC (Master Fund Manager), a Delaware limited liability company. The Master Fund Manager acts as investment manager for Harbinger Master Fund Cayman and makes investment decisions on its behalf pursuant to contractually delegated authority. *Id.* at 11, n.33.

⁷⁵ See Petition at 11, n.34.

⁷⁶ See January 25, 2008 Letter, Attachment 7(a).

⁷⁷ *Id.* at Attachment 8(a). As explained *supra* note 21, we calculate the foreign equity interest in MSV LP by multiplying the foreign equity interest held through each fund in SkyTerra by 99.29%, which is SkyTerra’s equity investment in MSV LP. The foreign voting interests are multiplied by 100%, which is SkyTerra’s voting interest in MSV LP.

and they have their world headquarters in a WTO Member country (Ireland).⁷⁸ Moreover, notwithstanding a *de minimis* non-WTO equity interest from Bahamian investors, the vast majority of the direct and indirect equity interests in Harbinger Master Fund Cayman is from investors from WTO Member countries.⁷⁹

11. We also find that Harbinger Special Fund is properly viewed, for purposes of our analysis, as having its principal place of business in the United States. As noted above, Harbinger Special Fund is organized in Delaware and ultimately controlled by U.S. citizens through a U.S.-organized general partner.⁸⁰ Although the majority (70.26%) of the economic interests in Harbinger Special Fund are held by an unnamed Cayman Islands limited partnership (Cayman LP), Petitioners represent that Cayman LP's general partner is a Delaware limited liability company that, in turn, is ultimately controlled by a corporation that is organized in the United States and ultimately controlled by a U.S. citizen.⁸¹ Petitioners represent that, other than the economic interest held by Cayman LP, the remaining limited partners of Harbinger Special Fund are individual U.S. citizens or U.S.-organized entities that principally conduct business in the United States.⁸² Accordingly, we find it reasonable to conclude, based on the record, that Harbinger Special Fund, which is U.S.-organized, also has its principal place of business in the United States. We, therefore, do not count as foreign the 1.54 percent equity and 4.80 percent voting interests that Harbinger Special Fund holds indirectly in MSV LP as a result of Harbinger Special Fund's direct shareholdings in SkyTerra. We calculate below, however, the significant foreign investment held indirectly in MSV LP as a result of foreign investment in Harbinger Special Fund's foreign limited partner, Cayman LP.

12. Turning to foreign investment held in MSV LP through the Harbinger Funds, Petitioners submitted information showing that one foreign-organized entity, the Offshore Fund, holds 83.90 percent of the equity interests in Harbinger Master Fund Cayman, which constitutes a controlling interest.⁸³ They also submitted information showing that one foreign-organized entity, Cayman LP, holds a 70.26 percent equity interest, representing a non-controlling limited partnership interest, in Harbinger Special Fund.⁸⁴

⁷⁸ Petition at 12, Attachment D; see October 5, 2007 Letter at 4, Attachment 1; November 26, 2007 Letter, n.1. See *supra* ¶ 9.

⁷⁹ See *infra* ¶ 13.

⁸⁰ See *supra* ¶ 9.

⁸¹ October 5, 2007 Letter at 4.

⁸² October 5, 2007 Letter, Attachment 1 at 4.

⁸³ The Offshore Fund is the Cayman Islands vehicle that holds 83.90 percent of the equity and voting interests in Harbinger Master Fund Cayman. See *supra* note 28 and accompanying text. See also January 25, 2008 Letter, Attachment 7(b)(Notes). Because the Offshore Fund is foreign-organized, Petitioners treat as foreign all of the 83.90 percent equity and voting interests held by Offshore Fund in Harbinger Master Fund Cayman. See January 25, 2008 Letter, Attachment 7(b). At the same time, they note that a small portion (9.33%) of the Offshore Fund's own economic interests are held by U.S. investors. See Notes to the January 25, 2008 Letter, Attachment 7(b). They also calculate that non-WTO investors hold a *de minimis* portion (0.49%) of Offshore Fund's economic interests. Petitioners request approval for all the non-U.S., WTO individuals and entities holding interests in Offshore Fund. *Id.* We calculate these interests separately in paragraph 13.

⁸⁴ See January 25, 2008 Letter, Attachment 7(b). Cayman LP is the Cayman Islands vehicle that holds 70.26 percent of the equity and voting interests in Harbinger Special Fund. See January 25, 2008 Letter, Attachment 7(b)(Notes). Because Cayman LP is foreign-organized, Petitioners treat as foreign all of the 70.26 percent equity and voting interests held by Cayman LP in Harbinger Special Fund. See January 25, 2008 Letter, Attachment 7(b). At the same time, they note that a small portion (14.51%) of Cayman LP's economic interests are held by U.S. investors. (continued....)

Based upon the information submitted by Petitioners, we find that the Offshore Fund holds indirectly 3.72 percent of the equity (83.90% x 4.43%) and 13.83 percent of the voting interests in SkyTerra through Harbinger Master Fund Cayman,⁸⁵ and Cayman LP holds indirectly 1.08 percent equity (70.26% x 1.54%) and 3.37 percent voting (70.26% x 4.80%) interest in SkyTerra through the Harbinger Special Fund. We then calculate their respective equity and voting interests in MSV LP by multiplying their interests by SkyTerra's investment in MSV LP. Accordingly, we find that the Offshore Fund holds indirectly 3.69 percent equity (3.72% x 99.29%) and 13.83 percent voting (13.8% x 100%) interest in MSV LP through Harbinger Master Fund Cayman, and Cayman LP holds indirectly 1.07 percent equity (1.08% x 99.29%) and 3.37 percent voting (3.37% x 100%) interest in MSV LP through Harbinger Special Fund.

13. We also calculate separately the indirect equity and voting interests held in SkyTerra and MSV LP by foreign investors of the Offshore Fund through Harbinger Master Fund Cayman. According to the Petition, approximately 90.67 percent of Offshore Fund's equity is held by foreign citizens or entities, while the remaining 9.33 percent are held by U.S. individuals or entities.⁸⁶ Of the 90.67 percent, Petitioners represent that 90.18 percent are held by non-U.S. individuals and entities from WTO Member countries, and the remaining 0.49 percent is held by non-U.S. individuals or entities from the Bahamas, a country that is not part of the WTO.⁸⁷ Accordingly, we find that Offshore Fund foreign investors from WTO Member countries hold indirectly 3.35 percent equity (90.18% x 83.90% x 4.43%) and 13.83 percent voting (13.83% x 100%) interests in SkyTerra.⁸⁸ We also find that Offshore Fund investors from non-WTO Member countries hold indirectly 0.02 percent equity (0.49% x 83.90% x 4.43%) and 0.06 percent voting (0.49% x 83.90% x 13.83%) interest in SkyTerra.⁸⁹ By multiplying their interests by SkyTerra's investment in MSV LP, we find that Offshore Fund investors from WTO Member countries hold 3.33 percent equity (3.35% x 99.29%) and 13.83 percent voting (13.83% x 100%) interest, and Offshore Fund investors from non-WTO Member countries hold 0.02 percent equity (0.02% x 99.29%) and 0.06 percent voting (13.83% x 100%) interest in MSV LP.

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See Notes to the January 25, 2008 Letter, Attachment 7(b). Petitioners request approval for the non-U.S., WTO individuals and entities holding interests in Cayman LP. *Id.* We calculate these interests separately in paragraph 14.

⁸⁵ The Petitioners represent that the 83.90% foreign voting interest held by the Offshore Fund in Harbinger Master Fund Cayman is a controlling interest and therefore the multiplier was not used to calculate the foreign voting interest held by the Offshore Fund in Harbinger Master Fund Cayman. January 25, 2008 Letter, Attachment 7(b).

⁸⁶ See October 5, 2007 Letter, Attachment 1. Non-U.S. individuals and entities from WTO Member countries hold approximately 90.18% of the limited partnership interests in Offshore Fund. According to Petitioners, the Offshore Fund consists of investors that are (1) citizens of the United States (0.06%); (2) citizens of Canada, South Africa and the United Kingdom (0.07%); (3) banks/insurance companies/pension plans and foundations/endowments organized in, and with their principal places of business in, the United States (5.17%); (4) banks/insurance companies/pension plans and foundations/endowments with their principal places of business in the Cayman Islands, Isle of Man, Luxembourg, the Netherlands and the United Kingdom (4.27%); (5) other investors that are organized in, and with their principal places of business in, the United States (4.10%); and (6) other investors with their principal places of business in Australia, the 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, and the Bahamas (86.33%).

⁸⁷ See January 25 Letter, Attachment 7(b)(Notes).

⁸⁸ Because WTO investors hold more than 50% of the equity interests in the Offshore Fund (which, in turn, holds a controlling interest in Harbinger Master Fund Cayman), Petitioners did not use the multiplier to calculate the foreign voting interest held in SkyTerra by the Offshore Fund's WTO investors. January 25, 2008 Letter, Attachment 7(b)(Notes).

⁸⁹ January 25, 2008 Letter, Attachment 7(b)(Notes).

14. In addition, we calculate separately the indirect equity and voting interests held in SkyTerra and MSV LP by foreign investors of Cayman LP through Harbinger Special Fund.⁹⁰ Cayman LP holds 70.26 percent of the equity of Harbinger Special Fund. According to the Petitioners, the foreign limited partners of Cayman LP hold approximately 85.49 percent of its equity.⁹¹ Thus, these limited partners hold indirectly 0.92 percent of the equity ($85.49\% \times 70.26\% \times 1.54\%$) and 2.88 percent of the voting ($85.49\% \times 70.26\% \times 4.80\%$) interests in SkyTerra which, in turn, represents 0.91 percent equity ($0.92\% \times 99.29\%$) and 2.88 percent voting ($2.88\% \times 100\%$) interests in MSV LP. We find that these foreign equity and voting interests are properly ascribed to WTO Member countries.

15. Foreign Equity and Voting Interests Held By and Through Former MSV Minority Investors:⁹² The Former MSV Minority Investors are comprised of two U.S. citizens (collectively, Former MSV Investor VI), four private equity funds (Former MSV Investor I, Former MSV Investor II, Former MSV Investor III and Former MSV Investor IV), and a U.S. institutional investor (Former MSV Investor V).⁹³ Collectively, the Former MSV Minority Investors hold 3.41 percent of the equity and 10.70 percent of the voting interests in SkyTerra.⁹⁴ Of the four private equity funds, three are organized and have their world headquarters in the United States, are controlled by U.S. citizens, with the majority of their equity coming from the United States.⁹⁵

16. Because Former MSV Investor I is a foreign-organized company (Cayman Islands), we calculate the equity and voting interests that it holds indirectly in MSV LP through its direct shareholdings in SkyTerra. Former MSV Investor I holds a 0.96 percent equity and 3.01 percent voting interest in SkyTerra.⁹⁶ Thus, by multiplying these interests by SkyTerra's investment in MSV LP, we find that Former MSV Investor I holds indirectly 0.95 percent of the equity interests ($0.96\% \times 99.29\%$) and 3.01 percent of the voting interests ($3.01\% \times 100\%$) in MSV LP.⁹⁷ Because Former MSV Investor I's

⁹⁰ See *supra* n.39.

⁹¹ According to Petitioners, Cayman LP consists of investors that are (1) citizens of the United States (0.13%); (2) banks/insurance companies/pension plans and foundations/endowments that are organized in, and have their principal places of business in, the United States (9.09%); (3) other investors that are organized in, and have their principal places of business in, the United States (5.30%); and (4) other investors that have their principal places of business in the Netherlands, Channel Islands, Cayman Islands, Canada, Finland, Germany, Ireland, Liechtenstein, Luxembourg, Norway, Panama, Switzerland, and the British Virgin Islands (85.49%). See January 25, 2007 Letter, Attachment 7(b), October 5, 2007 Letter, Attachment 1.

⁹² Petitioners state that in September 2006, SkyTerra acquired the remaining 20% of the membership interests in MSV Investors, LLC in exchange for SkyTerra stock, resulting in SkyTerra becoming the sole member of MSV Investors, LLC. SkyTerra had previously owned 80% of MSV Investors, LLC. As a result, the former minority members of MSV Investors, LLC became direct shareholders of SkyTerra stock. *Id.* at n.2.

⁹³ See October 5, 2007 Letter at 5-7.

⁹⁴ See January 25, Letter, Attachment A.

⁹⁵ See October 5, 2007 Letter at 7, Attachments 4, 5 and 6. According to the Petitioners, all the equity in Former MSV Investor II and Former MSV Investor IV is held, in the aggregate, by investors that are citizens of the United States or that are organized in the United States and have their principal place of business in the United States. The majority of Former MSV Investor III's equity is held by U.S. citizens or by investors that are organized and have their principal places of business in the United States. However, 6.85% of the equity interests in Former MSV Investor III are unknown, and are assumed, for purposes of this analysis, to come from non-WTO Member countries.

⁹⁶ See January 25, 2008 Letter, Attachment 7(a).

⁹⁷ *Id.* at Attachment 8(a),

world headquarters is in the United States, tangible properties and greatest sales and/or revenues in the United States, and officers are U.S. citizens,⁹⁸ we find that the 0.95 percent equity interest and 3.01 percent voting interest held in MSV LP by Former MSV Investor I are properly treated as investment from the United States or the Cayman Islands, which we treat as a WTO Member⁹⁹ for purposes of our public interest analysis under section 310(b)(4) of the Act and the Commission's foreign ownership policies adopted in the *Foreign Participation Order*.

17. We next calculate the indirect foreign ownership interests held in MSV LP through Former MSV Investor I and Former MSV Investor III, each of which has foreign limited partners. Former MSV Investor I and Former MSV Investor III each holds a 0.96 percent equity and a 3.01 percent voting interest in SkyTerra. Foreign limited partners hold 42.51 percent of the economic interests in Former MSV Investor I, and foreign limited partners hold 6.85 percent of the economic interests in Former MSV Investor III. We calculate that the foreign limited partners of Former MSV Investor I hold indirectly 0.41 percent equity (0.96% x 42.51%) and 1.28 percent voting (3.01% x 42.51%) interest in SkyTerra, and the foreign limited partners of Former MSV Investor III hold indirectly 0.07 percent equity (0.96% x 6.85%) and 0.21 percent voting (3.01% x 6.85%) interest in SkyTerra. These interests, in turn, represent 0.41 percent equity (0.41% x 99.29%) and 1.28 percent voting (1.28% x 100%) interest in MSV LP by the foreign limited partners of Former MSV Investor I, and 0.07 percent equity (0.07% x 99.29%) and 0.21 percent voting (0.21% x 100%) interest in MSV LP by the foreign limited partners of Former MSV Investor III. Because the Petitioners were unable to provide the citizenship or home market information for these limited partners, however, we consider their investments to be unidentified and, therefore, attribute these investments to non-WTO Member countries.

18. Foreign Equity and Voting Interests Held By and Through the Columbia Funds: The Columbia Funds that hold shares of SkyTerra stock are Columbia Capital Equity Partners III (Cayman), L.P. (CCEP III Cayman), Columbia Capital Equity Partners III (QP), L.P. (CCEP III QP), Columbia Capital Equity Partners III (AI), L.P. (CCEP III AI), Columbia Capital Investors III, LLC (CCI III), and Columbia Capital Employee Investors III, LLC (CEI III).¹⁰⁰ The Columbia Funds hold collectively 5.20 percent of the equity interests and 16.20 percent of the voting interests in SkyTerra.¹⁰¹ Each of the Columbia Funds is organized in Delaware, except CCEP III Cayman, which is organized as a Cayman Islands limited partnership. CCEP III Cayman's general partner, Columbia Capital Equity Partners (Cayman) III Ltd, is also organized in the Cayman Islands.¹⁰²

19. Because CCEP III Cayman is a foreign-organized company, we calculate the equity and voting interests that it holds indirectly in MSV LP as a result of CCEP III Cayman's direct shareholdings in SkyTerra. CCEP III Cayman holds directly 1.54 percent of the equity interests and 4.80 percent of the voting interests in SkyTerra. Therefore, CCEP III Cayman holds indirectly 1.53 percent of the equity interests (1.54% x 99.29%) and 4.80 percent of the voting interests (4.80% x 100%) in MSV LP.¹⁰³ We find that the 1.54 percent equity and 4.80 percent voting interests held indirectly in MSV LP by CCEP III Cayman are properly treated as investment from a WTO Member country for purposes of our public interest analysis under section 310(b)(4) of the Act and the Commission's foreign ownership policies

⁹⁸ See Petition at 12, n.39.

⁹⁹ See *supra* n.17.

¹⁰⁰ See Petition at 8-9.

¹⁰¹ See January 25, 2007 Letter, Attachment A.

¹⁰² *Id.*

¹⁰³ See January 25, 2008 Letter, Attachments 7(a) and 8(a).

adopted in the *Foreign Participation Order*. Petitioners represent that all of the Columbia Funds, including CCEP III Cayman, ultimately are controlled by U.S. citizens.¹⁰⁴ In addition, the vast majority of the economic interests in the funds are attributable to investors from the United States and other WTO Member countries.¹⁰⁵ Based upon the record and the representations made by the Petitioners, we find that all of the Columbia Funds, including CCEP III Cayman, principally conduct business in the United States or another WTO Member country (Cayman Islands).

20. Turning next to foreign investment held in MSV LP through the Columbia Funds, Petitioners assert that foreign investors hold 45.28 percent of the equity in CCEP III Cayman and 1.56 percent of the equity in CCEP III QP.¹⁰⁶ As noted, CCEP III Cayman holds directly 1.54 percent of the equity and 4.80 percent of the voting interests in SkyTerra. CCEP III QP holds directly 2.80 percent of the equity and 8.74 percent of the voting interests in SkyTerra. We therefore calculate that foreign investors hold indirectly in SkyTerra a 0.70 percent (1.54% x 45.28%) equity interest through CCEP III Cayman and a 0.04 percent (2.80% x 1.56%) equity interest through CCEP III QP. These interests represent a 0.70 percent indirect equity interest in MSV LP (0.70% x 99.29%) held through CCEP III Cayman and a 0.04 percent indirect equity interest in MSV LP (0.04% x 99.29%) held through CCEP III QP. Consistent with our foreign ownership case precedent, we also calculate for the foreign investors of CCEP III Cayman and CCEP III QP a voting interest of 2.17 percent (4.80% x 45.28%) and 0.14 percent (8.74% x 1.56%), respectively, in SkyTerra. These interests represent a 2.17 percent indirect voting interest in MSV LP (2.17% x 100%) held through CCEP III Cayman and a 0.14 percent indirect voting interest in MSV LP (0.14% x 100%) held through CCEP III QP. Accordingly, we attribute to the foreign investors of the Columbia Funds an indirect, aggregate 0.74 percent equity and 2.31 percent voting interest in MSV LP.¹⁰⁷ Based on the information submitted by Petitioners, we find that all of these equity and voting interests are properly ascribed to WTO Member countries.¹⁰⁸

21. Foreign Equity and Voting Interests Held Through the Spectrum Funds: The Spectrum Funds are Spectrum Equity Investors IV, L.P. (“Spectrum IV”), Spectrum Equity Investors Parallel IV, L.P. (“Spectrum Parallel IV”), and Spectrum Equity IV Investment Managers, L.P. (“Spectrum IV Managers”).¹⁰⁹ The Spectrum Funds hold collectively 0.71 percent of the equity interests and 2.24 percent of the voting interests in SkyTerra.¹¹⁰ Each of the Spectrum Funds is organized as a Delaware limited partnership and is ultimately controlled by individuals that are citizens of the United States.¹¹¹

¹⁰⁴ See Petition at 8-9, nn.21-25.

¹⁰⁵ See *infra* ¶ 20.

¹⁰⁶ See January 25, 2008 Letter, Attachment 7(b).

¹⁰⁷ See January 25, 2008 Letter, Attachments 7(b) and 8(b).

¹⁰⁸ The Petition represents that the foreign investors of CCEP III (Cayman) and CCEP III (QP) are (1) high net worth individuals who are citizens of Canada; (2) government agencies (non-pension) of a WTO Member country; (3) banks, pension/employee benefit plans, insurance companies with principal places of business in Kuwait, Japan and the Cayman Islands; (4) other institutional investors with principal places of business in Australia, Ireland, Bermuda, Luxembourg, Netherlands Antilles, Kuwait, Mauritius, Channel Islands, Switzerland, Panama, British Virgin Islands, and Cayman Islands. See Petition, Attachment B.

¹⁰⁹ See Petition at 10.

¹¹⁰ See January 25, 2007 Letter, Attachment A.

¹¹¹ See Petition at 10, nn.28-30, Attachment C. The foreign investors of Spectrum IV consist of (1) high net worth individuals who are citizens of the United Kingdom (0.05%); (2) government agencies (non-pension) of WTO Member countries (1.30%); (3) non-U.S. banks, pension/employee benefit plans, insurance companies with a (continued....)

22. Petitioners represent that foreign individuals and entities hold 19.99 percent of the equity investment in Spectrum IV and 2.07 percent of the equity investment in Spectrum Parallel IV. Spectrum IV holds 0.70 percent equity and 2.20 percent voting interest in SkyTerra, and Spectrum Parallel IV holds no equity and 0.01 percent voting interest in SkyTerra. Accordingly, based upon the record, we find that foreign investors hold 0.14 percent of the equity (0.70% x 19.99%) and 0.44 percent of the voting (2.20% x 19.99%) interests in SkyTerra through Spectrum IV,¹¹² and hold no equity (0.00% x 2.07%) or voting (0.01% x 2.07%) interest in SkyTerra through Spectrum Parallel IV. The interests held by foreign investors in Spectrum IV amount to a 0.14 percent indirect equity (0.14% x 99.29%) and a 0.44 percent indirect voting (0.44% x 100%) interest in MSV LP.¹¹³ Petitioners represent that all of the foreign investment in the Spectrum Funds is attributable to WTO Member countries.¹¹⁴ We accept this representation, and we find that the indirect foreign investment of the Spectrum Funds in MSV LP is properly ascribed to WTO Member countries.

23. Foreign Equity and Voting Interests Held Through BCE: According to Petitioners, BCE, Inc. (BCE) holds 20.68 percent of SkyTerra's equity interests and no voting interests.¹¹⁵ BCE is a publicly-traded corporation organized under the laws of Canada. In 2001, the International Bureau, under delegated authority, authorized MSV "to be owned indirectly by TMI and/or BCE, Inc. and their Canadian shareholders in an amount up to and including an equity and/or voting interest of 40%."¹¹⁶ BCE's 20.68 percent direct equity interest in SkyTerra represents a 20.53 percent indirect equity interest in MSV LP (20.68% x 99.29%). We find that this equity interest falls within the parameters of the 2001 ruling. With regard to BCE's shareholders, however, Petitioners state that as of December 31, 2006, non-U.S., non-Canadian investors from WTO Member countries held 0.10 percent of the equity and voting interests in BCE.¹¹⁷ We find that these non-U.S., non-Canadian investors hold indirectly a 0.02 percent (0.10% x 20.68%) equity interest in SkyTerra, and a 0.02 percent (0.02% x 99.29%) equity interest in MSV LP through SkyTerra.¹¹⁸ We are unable to determine, however, the citizenship or principal places of business of BCE's non-U.S., non-Canadian shareholders given the limited amount of information

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principal place of business in Japan (0.26%); (4) non-U.S. foundations/endowments/trusts with a principal place of business in the United Kingdom (2.08%); and (5) other institutional investors with principal places of business in the Cayman Islands, Germany, United Kingdom, British Virgin Islands, Luxembourg, Panama, Bermuda, Guernsey and Canada. (16.30%). The foreign investors of Spectrum Parallel IV consist of high net worth individuals that are citizens of the United Kingdom (2.07%).

¹¹² See January 25, 2008 Letter, Attachment 7(b).

¹¹³ *Id.* at Attachment 8(b).

¹¹⁴ See Petition at 11, Attachment C.

¹¹⁵ See January 25, 2008 Letter, Attachment A. See also Petition at 14, n.43 (noting that BCE holds only non-voting SkyTerra stock).

¹¹⁶ *Motient Services, Inc. and TMI Communications and Company, LP, Assignors, and Mobile Satellite Ventures Subsidiary LLC, Assignee*, Order and Authorization, DA 01-2732, 16 FCC Rcd 20469, 20477 ¶ 22 (Int'l Bur. 2001).

¹¹⁷ See Petition at 13-14. Petitioners state that, as of December 31, 2006, the remaining interests in BCE were held directly or indirectly by citizens of Canada or entities organized under the laws of Canada (85.90%) and by U.S. citizens or entities organized under the laws of the United States (14%). *Id.* at 13, n.41.

¹¹⁸ See January 25, 2008 Letter, Attachments 7(b) and 8(b).

provided by the Petitioners.¹¹⁹ Accordingly, in accordance with our policies, we treat this investment as non-WTO Member country investment.

24. Foreign Equity and Voting Interests Through Motient Venture Holdings/TerreStar Corporation: Motient Venture Holdings, Inc. (Motient Venture Holdings) holds 41.48 percent of SkyTerra's equity interests and no voting interests.¹²⁰ Motient Venture Holdings is a wholly-owned subsidiary of TerreStar Corporation (TerreStar) (formerly Motient Corporation).¹²¹ According to Petitioners, foreign individuals and entities account for 56.26 percent of the equity investment in TerreStar.¹²² We therefore calculate that foreign investors hold indirectly a 23.34 percent equity interest in SkyTerra through their shareholdings in TerreStar (56.26% x 41.48%), which amounts to an indirect 23.17 percent equity interest in MSV LP (23.34% x 99.29%). Based on submissions made by Petitioners, we find that 18.72 percent of this equity is properly treated as investment from WTO Member countries, with the remaining 4.45% treated as investment from non-WTO Member countries.¹²³ Petitioners note that these foreign ownership calculations for TerreStar do not include the foreign ownership interests held through Harbinger Master Fund Cayman as a result of foreign investment in that fund's controlling shareholder, the Offshore Fund.¹²⁴ Petitioners request specific approval for the non-U.S., WTO investors holding interests in MSV LP through the Offshore Fund's indirect interest in TerreStar.¹²⁵ Based on the information submitted by Petitioners, we calculate that non-U.S., WTO investors in Offshore Fund hold indirectly a 22.70 percent equity interest in TerreStar.¹²⁶ This amount represents a 9.42 percent (22.70% x 41.48%) indirect equity interest in SkyTerra and, in turn, a 9.35 percent (9.42% x 99.29%) indirect equity interest in MSV LP. We calculate that non-WTO investors in Offshore Fund hold indirectly a 0.12

¹¹⁹ *Id.* at 13, n.41. Petitioners assert that, as of December 31, 2006, none of the equity or voting interests in BCE were held directly or indirectly by citizens of non-WTO Member countries, or by entities that are organized in, or have their principal place of business in, non-WTO Member countries. *Id.*

¹²⁰ See January 25, 2008 Letter, Attachment A.

¹²¹ See January 25, 2008 Letter at 2; November 6 2007 Letter at 1.

¹²² See January 25, 2008 Letter, Attachment 7(b). Petitioners calculate the 56.26% foreign ownership of TerreStar as follows: (1) 18.50% foreign ownership attributed to TerreStar shareholders other than Harbinger Master Fund Cayman and Harbinger Special Fund; (2) 30.00% foreign ownership attributed to Harbinger Master Fund Cayman, the same Cayman Islands vehicle that is invested directly in SkyTerra (Harbinger Master Fund Cayman holds a 30.00% direct interest in TerreStar); and (3) 7.76% foreign ownership by Harbinger Special Fund, the same U.S.-organized Harbinger Fund that is invested directly in SkyTerra and which has 70.26% foreign ownership (Harbinger Special Fund's direct 11.05% interest in TerreStar x 70.26% foreign ownership of Harbinger Special Fund). See Notes to January 25, 2008 Letter, Attachment 7(b).

¹²³ *Id.* Petitioners reported that, of the 23.17% equity interests in MSV LP that are attributable to foreign shareholders of TerreStar, 4.45% are from non-WTO Member countries. See January 25, 2008 Letter, Attachments 7(b) and 8(b). As we discuss in paragraph 25, we are concerned about the quality of information made available to the Commission with respect to the foreign ownership of TerreStar, with the exception of the Harbinger Funds for which we have more complete information.

¹²⁴ See January 25, 2008 Letter, Attachment 7(b)(Notes).

¹²⁵ *Id.*

¹²⁶ Non-U.S. investors from WTO Member countries hold 90.18% of the economic interests in Offshore Fund. See January 25, 2008 Letter, Attachment 7(b); see also *supra* ¶ 13. Offshore Fund, in turn, holds 83.90% of the equity (and voting interests) in Harbinger Master Fund Cayman. See January 25, 2008 Letter, Attachments 7(b); see also *supra* ¶ 12. Harbinger Master Fund Cayman holds a 30% economic interest in TerreStar as reported by Petitioners. We therefore calculate that non-U.S. investors from WTO Member countries hold a 22.70 percent equity interest in TerreStar (90.18% x 83.90% x 30.00%).

percent equity interest in TerreStar.¹²⁷ This amount represents a 0.05 percent (0.12% x 41.48%) indirect equity interest in SkyTerra and, in turn, a 0.05 percent (0.05% x 99.29%) indirect equity interest in MSV LP. We include this amount in our calculation of total non-WTO equity investment in MSV LP.

25. While we have accepted Petitioners' representations as to the citizenship and principal places of business of TerreStar's shareholders, we are concerned about the quality of information made available to the Commission with respect to the foreign ownership of TerreStar, with the exception of the Harbinger Funds for which we have more complete information. We will treat any future investment by TerreStar in SkyTerra and, in turn, in MSV LP, as unidentified foreign investment unless and until we are provided with information to demonstrate that TerreStar's shareholdings in SkyTerra are properly ascribed to the United States or other WTO Member countries.¹²⁸ We also caution TerreStar that, as a significant stakeholder in SkyTerra and, in turn, in MSV, a Commission licensee subject to section 310(b) of the Act, TerreStar should have internal procedures in place to monitor the citizenship and principal places of business of investors acquiring its shares in public markets.¹²⁹

26. Equity and Voting Interests Held By Other Non-U.S. SkyTerra Shareholders and Other Limited Partners of MSV LP: Other non-U.S. shareholders of SkyTerra hold 1.77 percent and 5.53 percent of its equity and voting interests, respectively.¹³⁰ We therefore calculate that these other non-U.S. SkyTerra shareholders hold indirectly a 1.76 percent equity interest (1.77% x 99.29%) and 5.53 percent voting interest (5.53% x 100%) in MSV LP. Limited partners of MSV LP other than SkyTerra, which are not named for the record, hold 0.71 percent of MSV LP's equity interests.¹³¹ We find that there is not adequate information in the record to determine the citizenship of the other non-U.S. SkyTerra shareholders or other limited partners of MSV LP, and we therefore ascribe these interests to non-WTO Member countries.

27. Summary of Findings. In summary, based on the information submitted by Petitioners with respect to the foreign ownership of MSV LP, we find that the total indirect foreign equity and voting interests held in MSV LP by SkyTerra shareholders for which Petitioners seek approval under section 310(b)(4) are 7.52 percent and 22.84 percent, respectively.¹³² We find that all of these SkyTerra shareholders have their principal places of business in WTO Member countries. We also find that the total indirect foreign equity and voting interests held in MSV LP *through* certain SkyTerra shareholders for which Petitioners seek approval is 25.28 percent and 21.72 percent, respectively. Of this amount, we

¹²⁷ Non-U.S. investors from the Bahamas (a non-WTO Member country) hold 0.49% of the economic interests in Offshore Fund. See January 25, 2008 Letter, Attachment 7(b); see also *supra* ¶ 13. Offshore Fund, in turn, holds 83.90% of the equity (and voting interests) in Harbinger Master Fund Cayman. See January 25, 2008 Letter, Attachments 7(b); see also *supra* ¶ 12. Harbinger Master Fund Cayman holds a 30% economic interest in TerreStar as reported by Petitioners. We therefore calculate that non-U.S. investors from a non-WTO Member country hold a 0.12 percent equity interest in TerreStar (0.49% x 83.90% x 30.00%).

¹²⁸ Petition of TelCove, Inc. for Declaratory Ruling Pursuant to section 310(b)(4) of the Communications Act of 1934, as amended, Order and Declaratory Ruling, DA 06-860, 21 FCC Rcd 3982, 3992 ¶ 24 (Int'l Bur. 2006).

¹²⁹ Cf. See *Verizon Communications, Inc., Transferor and America Movil, S.A. de C.V., Transferee, Application for Authority to Transfer Control of Telecomunicaciones de Puerto Rico, Inc. (TELPRI)*, WT Docket No. 06-113, Memorandum Opinion and Order and Declaratory Ruling, FCC 07-43, 22 FCC Rcd 6195, 6223 ¶ 61 (2007).

¹³⁰ See January 25, 2008 Letter, Attachments A, 7(a) and 8(a).

¹³¹ See January 25, 2008 Letter, Attachment A.

¹³² These amounts do not include the 20.54 percent equity interest held indirectly in MSV LP by BCE. See January 25, 2008 Letter, Attachment 8(a). As explained above (¶ 23), Petitioners have previously received approval for the 20.54 percent equity interest held indirectly in MSV LP by BCE and its Canadian shareholders.

find that 0.02 percent of the equity interests are attributable to non-U.S., non-Canadian shareholders of BCE for which we do not have adequate information as to their citizenship or principal places of business. We therefore treat this 0.02 equity percent indirect equity interest in MSV LP as non-WTO investment. Further, we find that other investors from non-WTO Member countries (including other unidentified investors) hold indirectly an aggregate 7.47 percent and 7.79 percent of MSV LP's equity and voting interests, respectively. These other non-WTO equity and voting interests in MSV LP are attributable to (1) unidentified investors in Former MSV Investor I (0.41 percent equity and 1.28 percent voting interests); (2) unidentified investors in Former MSV Investor III (0.07 percent equity and 0.21 percent voting interests); (3) Bahamian investors in the Offshore Fund, through Harbinger Master Fund Cayman (0.02 percent equity and 0.06 percent voting interests); (4) shareholders of TerreStar (4.45 percent equity interest); (5) Bahamian investors in the Offshore Fund, through Harbinger Master Fund Cayman's investment in TerreStar (0.05 percent equity interest); (6) Other non-U.S. SkyTerra shareholders (1.76 percent equity and 5.53 percent voting interests); and (7) Other limited partners of MSV LP (0.71 percent equity and voting interests). Additionally, we find that the indirect voting interest held in MSV LP by BRH Holdings GP, Ltd. is 29.84 percent and properly ascribed to a WTO Member country.

**STATEMENT OF COMMISSIONER
MICHAEL J. COPPS, CONCURRING**

Re: *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 Solutions Fund, L.P. Petition for Expedited Action Under Section 310(b) of the Communications Act of 1934, as amended, Order and Declaratory Ruling*

Today's decision authorizes, on an interim and permanent basis, certain shifts in the ownership structure of a company holding U.S. common carrier satellite licenses. The net result is that a different mixture of private equity funds will control the company. While I have no reason to believe that this latest group of owners will operate the company any differently than the present owners, I concur in today's decision—as I have in prior satellite transactions involving private equity firms—because the Commission still has not conducted a comprehensive investigation into the effects of private equity investment on Commission licensees.