Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
	)	
Applications Filed For Consent To Transfer	)	WC Docket No. 06-106
Control Of Mobile Satellite Ventures	)	DA 06-06-1254
Subsidiary LLC From Motient Corporation And	)	
Subsidiaries To SkyTerra Communications, Inc.	)	

REPLY TO OPPOSITION TO MOTION TO ACCEPT LATE-FILED COMMENTS

I. INTRODUCTION

Highland Capital Management, LP ("Highland"), by its undersigned attorneys, hereby submits its reply to the Opposition to Highland's Motion to Accept Late-Filed Comments that was filed by Motient Corporation ("Motient") on July 20, 2006.[1] Motient is the only entity that has opposed Highland's July 19, 2006 Motion to Accept Late-Filed Comments ("Motion").

The issues raised in Highland's Comments,[2] which Motient is asking that the Commission not consider, relate to whether the public interest will be served by a Commission grant of Motient's application.[3] The public interest demands that the Commission have access to all of the

[1] Opposition to Motion to Accept Late-Filed Comments, filed by Motient, Jul. 20, 2006 ("Opposition").

[2] Comments of Highland Capital Management, LP, filed Jul. 18, 2006 ("Comments").

[3] On May 17, 2006, Motient together with SkyTerra Communications, Inc. ("SkyTerra") (collectively, "the Applicants") filed an application seeking Commission approval of the transfer of control by Motient to SkyTerra of licenses and authorizations held by Mobile Satellite Ventures Subsidiary LLC ("MSV Sub"), a direct, wholly-owned subsidiary of Mobile Satellite Ventures LP ("MSV"). *See* Public Notice, Applications Filed for Consent to Transfer Control of Mobile Satellite Ventures Subsidiary LLC from Motient Corporation and Subsidiaries to SkyTerra Communications, Inc., WC Docket No. 06-106, released June 16, 2006.

facts that bear on its decision, and the desire to place such facts in the record before the Commission was the sole rationale for Highland's decision to file comments in this proceeding in the first place.

The fact that Motient would oppose Highland's Motion, when Highland's Comments were filed only moments after the deadline, prompts one to wonder what Motient has to fear by a full examination of all the relevant facts and makes grant of Highland's Motion all the more important. This is especially true in that, to the best of Highland's knowledge, no other individual or entity has filed in this proceeding, other than the Applicants themselves. Thus, without Highland, there is no one to raise questions, and proffer information to the Commission regarding the potentially detrimental impact of the proposed transaction on competition and on the provision of important new services key to such Commission goals as promotion of public safety and deployment of advanced services in rural areas.

II. DISCUSSION

In its Opposition, Motient claims that Highland had thirty days in which to prepare and file its Comments, and thus could have controlled whether its Comments were timely filed. In truth, for the reasons discussed below, Highland did not, as a practical matter, have the full 30-day period in which to prepare its Comments, and, so far as controlling whether its Comments were timely filed, Highland pointed out in its Motion that it uploaded its files within the comment period (*i.e.*, on the due date), but that a slight transmission and computer processing delay rendered the submission late-filed, according to the date-stamp on the Commission's electronic confirmation.

The very Comments that Motient would like to have excluded from the Commission's consideration in this proceeding were filed as a result of Highland's inability to obtain material

information from Motient about the proposed transaction and its effects on Motient, in which Highland is a major shareholder, MSV Sub and TerreStar Networks, Inc. ("TerreStar").[4] Highland's efforts to obtain information about the effects of the proposed transaction on these entities included a proxy contest, repeated requests for meetings and/or briefings, and, most recently, filing the litigation to which Motient refers in its Opposition.[5]

Had Highland been successful in its proxy bid (which would have placed Highland in a position to obtain the facts it sought using other means it would have had at its disposal), and/or had Motient been willing to meet with Highland, *see* discussion, *infra*, Highland would likely have had a good deal more information by which to evaluate the proposed transaction. But, as Highland's Comments reflect, the proxy contest was not held until July 12 – five days prior to the close of the comment period and Highland's repeated requests for meetings were ultimately to no avail. Moreover, and, perhaps in an effort to delay or avoid responding to Highland's information and document requests, Motient removed the Travis County Litigation to federal court on July 14.[6] On the heels of these developments, and with its hands effectively tied, Highland was working up to the last minute of the comment period to garner more data in hopes of providing the Commission with as much information as possible about, and as accurate a portrait as possible of,

---

[4] MSV Sub is the Commission licensee whose authorizations are the subject of the Application that is presently before the Commission. TerreStar is the company that is building out both the space and ground segments for a 2 GHz Mobile Satellite Service with Ancillary Terrestrial Components ("MSS/ATC") in partnership with TMI Communications ("TMI"), a Canadian firm that holds a 2 GHz authorization from the Commission and is a significant investor in both MSV and TerreStar. TerreStar, because of its pivotal role in the build out of the TMI/TerreStar network at 2 GHz, thus represents significant Commission (and public) interests.

[5] *Highland Crusader Offshore Partners, L.P., et al. v. Motient Corporation, et al.,* Cause No. D-1-GN-06-002219 (District Court of Travis County, TX, 53rd Judicial District), filed June 19, 2006 (hereinafter "Travis County Litigation").

[6] *See* Reply to Oppositions to Comments of Highland Capital Management, LP, filed Aug. 1, 2006, at 16-17 and fn. 33 (hereinafter "Reply to Oppositions to Highland's Comments").

as possible of, the impact of the proposed transaction on the public interest.

Motient is well aware that the timetables in the proxy contest and the Travis County Litigation affected the amount of time available to Highland in which to prepare and file its Comments, and Motient's "a miss is as good as a mile" argument that the Commission should completely ignore Highland's Comments because of a few seconds delay in computer processing time – the difference between filing at 11:59 on July 17 or 00:01 on July 18 – is the epitome of the elevation of form over substance. Again, one can only wonder, if the proposed transaction is truly in the public interest, as Motient and the other Applicants claim that it is, why Motient is so afraid that the Commission may consider the points raised in Highland's Comments.

Motient claims (Opposition at 3) that:

> In their transfer of control applications, the parties demonstrated that the proposed transaction, by rationalizing MSV's ownership structure, will enable MSV to attract capital more easily and will facilitate MSV's efforts to enter into strategic partnerships. Highland has shown nothing to the contrary.

In fact, the Applicants have "demonstrated" no such thing: the Applicants may have *asserted*, in a conclusory fashion, that the transaction would have such a desired effect, but, as Highland's Comments *did* show, the Applicants merely cited several *existing* aspects of their current L-Band build out plans (specifically, the pre-existing contract between MSV and Boeing) and then claimed that the proposed transaction would somehow give them better access to capital than they have now and would somehow facilitate the building out of their network. It is precisely the "demonstration" of *how* the proposed transaction would improve upon MSV's (and TerreStar's) present ability to raise capital and advance both companies' plans that Highland believes the Commission should seek before making its public interest determination.[7]

---

[7] The Commission should note that in March 2006, MSV successfully issued Senior Secured

Moreover, Motient states in its Opposition that "Highland has never sought to inform itself directly about TerreStar's business plan and management." Opposition at 3. Again, this is simply untrue: in March of 2006, during an MSV "road show" designed to raise debt capital, see fn. 7, below, Niles Chura, a Portfolio Manager at Highland and one of the persons that Highland recently nominated for a seat on the Motient Board, set up a conference call, through MSV's bankers, with certain members of MSV management – who were intimately familiar with activities at TerreStar – to discuss those activities as well as other issues pertaining to the MSS/ATC space.[8] On the day of the scheduled call, Highland's meeting with MSV management was abruptly cancelled.

Additionally, Mr. Chura attempted to schedule a meeting among Mr. James Dondero, President of Highland, himself, and Mr. Laurier "Larry" Boisvert, President and CEO of TMI,[9] TerreStar's Canadian partner, to discuss Mr. Boisvert's view of the MSS/ATC space and future

---

Discount Notes with an aggregate principal amount of $750 million at maturity, thus directly refuting Motient's assertion that the sale of MSV to SkyTerra is necessary in order to raise capital. In fact, during the recent proxy contest, Motient's management took great pains to point out to investors that it had successfully "raised over $600 million" and closed over $1.5 billion in M&A transactions. *See* Motient Corporation, *Investor Presentation*, June 2006, at slide 29, found at http://media.corporate-ir.net/media_files/irol/11/110135/InvestorPresentation_62306.pdf (last visited 7/21/2006), also filed with the SEC by Motient as a Schedule 14A, dated June 26, 2006. This clearly demonstrates that Motient's arguments to the Commission regarding the proposed transaction's positive effect on MSV's ability to raise capital are exaggerated, if not completely manufactured.

[8] Highland notes that no fewer than four of MSV's Directors also sit on TerreStar's Board, Motient Form 8-K, Exhibit 99.1, filed on Mar. 13, 2006 (pp. 63-54), and Highland understands that, in the year since TerreStar spun-out of MSV, Motient Form 8-K, Exhibit 99.1, filed on Mar. 13, 2006 (p. 6, fn. 2), it relied heavily on MSV for operational and technical support. These interlocking directorates and close operational ties made MSV a logical source of information regarding strategic issues involving TerreStar. Highland further notes that it is not aware of Motient having ever provided a similar opportunity for investors and potential investors to obtain information via a road show for TerreStar.

[9] Motient Form 8-K, Exhibit 99.1, filed Mar. 13, 2006 (pp. 61-64). Mr. Boisvert also sits on both MSV's and TerreStar's Boards.

plans for TerreStar. That conference call was also abruptly cancelled, just ninety minutes before its scheduled start time, and Mr. Chura was informed by Mr. Boisvert's assistant that the meeting would not be rescheduled.

Nonetheless, in response to Motient's accusation, on Friday, July 21, 2006, the day after Motient's Opposition was filed, Mr. Chura attempted to set up a meeting with Robert Brumley, TerreStar's CEO, only to be referred to Motient's General Counsel, who attempted to make arrangement of the requested meeting contingent upon Highland's dropping of the Travis County Litigation, and otherwise flatly refused to meet. Thus, Motient accuses Highland of not trying to educate itself, while simultaneously blocking any efforts by Highland to do just that. This is just another example of the Applicants' unwillingness to provide the kinds of basic information the Commission should have in order to evaluate the public interest impacts of the proposed transaction, including whether the claimed benefits to MSV would be outweighed by potential harms to TMI/TerreStar's 2 GHz MSS/ATC network.

Highland can only assume from Motient's refusal to meet, and the similar refusal of the intertwined management at MSV and TerreStar, that Motient, et al. are refusing like requests from all investors - anything to the contrary would potentially violate SEC regulations regarding selective disclosure of material non-public information. If management has indeed met with other investors, we would expect full disclosure of the materials and discussions to all investors, including Highland. Without access to material information regarding: (1) management's plans for TerreStar; (2) how Motient expects to fund operations or the tax liability that would result upon consummation of the proposed transaction (see next paragraph); and (3) the financial risks inherent in the transaction, Highland remains uncertain as to how its fellow investors in Motient

were able to (or how the Commission could possibly) get comfortable with the proposed transaction.

Motient would like the Commission to believe that Highland's Comments will serve only to complicate TerreStar's implementation of its business plans, and that "Highland should know that TerreStar is not a party to the transfer of control applications." Opposition at 3. Highland replies that it is far better to ask questions up front, before a particular plan is implemented (which is, indeed, the essence of the Commission's advance consent requirement for transfers of control), than to allow the implementation of an unexamined plan that could cripple an important competitor in the globally-harmonized 2 GHz MSS/ATC market. As Highland points out in its Comments, because of the $50 - $80 million tax liability that *Motient itself* stated that it would incur as a direct result of the transaction, it appears very likely that the transaction would leave Motient illiquid, presumably meaning that Motient would be unable to fund TerreStar, which Motient indicates will run out of cash this year.[10]

As for Motient's contention that TerreStar is not a party to the transfer of control applications, Highland has addressed this issue fully in its Reply to Oppositions to Highland's Comments. Highland would only add here that Motient appears to be taking the position that, in evaluating a complex transaction that implicates more than one set of public interest considerations, the Commission should only evaluate those considerations that the Applicants themselves want the Commission to evaluate, and should turn a blind eye to any potential public interest harms that the transaction may cause, if those harms would befall an entity that would be merely *affected by* the underlying transaction, but is not a party to the application. Such a position

[10] *See* Highland's Comments at 10-11 and citations therein; *see also* Highland's Reply to Oppositions to Comments of Highland Capital Management, LP, dated August 1, 2006 ("Reply to Oppositions to Highland's Comments") at 7-8.

is nonsense: whether or not an affected entity is a party to the application has no bearing on the Commission's evaluation of whether the transaction itself is in the public interest.[11]

Motient also mischaracterizes Highland's inclusion in its Comments of a reference to the Travis County Litigation, citing the different standards under which the transaction will be evaluated under the securities laws by the court and under the Commission's public interest standard in the instant proceeding. Highland agrees that the Commission, in the past, has refused to provide a forum for private disputes or shareholder grievances. However, Highland is not asking, nor does it expect ever to ask, the Commission to embark on a consideration of the merits of Highland's duly-prosecuted state court claims.

The references to the Travis County Litigation, specifically to the pending discovery requests therein, to the schedule for responses to that discovery and to the then fast-approaching hearing dates were included in Highland's Comments only to provide the Commission with an overview of the nature of the relevant facts that would soon be available for the Commission's use via other public fora, as set out more fully in Highland's Reply to Oppositions to Highland's Comments at 4-6, 15-17.[12] Highland completely agrees with Motient that "the Commission has

---

[11] *See Constellation, LLC, Carlyle PanAmSat I, LLC, Carlyle PanAmSat II, LLC, PEP PAS, LLC, and PEOP PAS, LLC, Transferors and Intelsat Holdings, Ltd., Transferee, Consolidated Application for Authority to Transfer Control of PanAmSat Licensee Corp. and PanAmSat H-2 Licensee Corp*, Memorandum Opinion and Order, IB Docket No. 05-290, at ¶17, rel. Jun. 19, 2006 (hereinafter "*PanAmSat Order*") (quoted in full in Reply To Oppositions to Highland's Comments at 7).

[12] Highland notes that much of the on-going litigation is a result of not only what Highland believes is bad management and the appearance of conflicts of interest, but also of a lack of transparency by Motient's management. The continued refusal by that management to share information with the public is demonstrated again in Motient's pleadings to the Commission, which, as Highland's unrebutted Comments show, *see, e.g.,* Comments at 3-4, wholly fail to provide *any* factual support for assertions that the transaction is in the public interest, much less *demonstrate* any such claims by a preponderance of the evidence, as required by Commission precedent (*see, e.g., Adelphia Communications Corporation-Time Warner Cable Inc. Transfer*, Memorandum Opinion and Order, FCC 06-105, ¶ 4, rel. Jul. 21, 2006 ("Applicants have the

ample authority, independent of any state court proceedings, to ascertain the facts it needs to make a public interest determination." Opposition at 4. Highland is merely asking the Commission to use that authority rather than to rely solely on the self-serving statements of the Applicants.

III. CONCLUSION

For all of the foregoing reasons, Highland respectfully requests that the Commission deny Motient's Opposition, grant Highland's Motion to Accept Late-Filed Comments and treat those Comments as if they had been filed a mere two minutes earlier.

Respectfully submitted,

/s/ Judith L. Harris

Judith L. Harris
James P. Schulz
Reed Smith, LLP
1301 K Street, NW
Suite 1100 – East Tower
Washington, DC 20005
(202) 414-9200 (Tel)
(202) 414-9299 (Fax)

Counsel for Highland Capital Management, LP

Dated: August 4, 2006

---

burden of proving, by a preponderance of the evidence, that the proposed transactions, on balance, serve the public interest.").

In accordance with the provisions of 47 C.F.R. §1.47, I certify that a copy of the foregoing was sent to the following on August 4, 2006:

David S. Konczal
Counsel for Mobile Satellite Ventures Subsidiary, LLC
Pillsbury Winthrop Shaw Pittman
2300 N Street, NW
Washington DC 20037

Henry Goldberg
Counsel for Motient Corporation
Goldberg, Godles, Wiener & Wright
1229 Nineteenth Street, NW
Washington, DC 20036

Tom Davidson
Counsel for SkyTerra
Akin Gump Strauss Hauer & Feld, LLP
Robert S. Strauss Building
1333 New Hampshire Avenue, N.W.
Washington, DC 20036-1564

Jim Ball
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Jodi Cooper
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Joseph Springsteen
Computer Crime and Intellectual Property Section
U.S. Department of Justice
1301 New York Avenue, NW
Suite 600
Washington, DC 20530

Sigal P. Mandelker
Deputy Assistant Attorney General
U.S. Department of Justice
1301 New York Avenue, NW
Suite 600
Washington, DC 20530

/s/ Judith L. Harris / Judith L. Harris