

July 14, 2010

VIA ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

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

Dear Ms. Dortch:

Verizon Wireless has previously demonstrated that the imposition in this proceeding of spectrum leasing and use limits affecting only two wireless carriers – each of which has access to *less* spectrum than Sprint Nextel – is unreasoned and otherwise unlawful.¹ Sprint Nextel has repeatedly claimed it has access to significantly *more* spectrum (including *far* more 4G-capable spectrum) than both Verizon Wireless and AT&T.² Recent comments by Sprint CEO Dan Hesse underscore this point. Speaking to the Financial Times earlier this week, Mr. Hesse indicated that Sprint Nextel is considering adding a Long Term Evolution (LTE) network to its growing list of supported networks, citing its significant spectrum advantage: “We have the spectrum resources where we could add LTE if we choose to do that, on top of the WiMAX network. *The beauty of having a lot of spectrum is we have a lot of flexibility.*”³

This latest statement further highlights the irrationality of conditions that restrict spectrum access and use by Verizon Wireless and AT&T but not Sprint Nextel, which through

¹ See, e.g., Verizon Wireless, Petition for Partial Reconsideration, IB Docket No. 08-184 *et al.* at 11-22 (Apr. 1, 2010) (“Verizon Pet. for Recon.”); Verizon Wireless, Reply to Oppositions to Petition for Partial Reconsideration, IB Docket No. 08-184 *et al.* at 7-8 (Apr. 19, 2010) (“Verizon Reply”); *Ex Parte* Letter to Marlene H. Dortch, Secretary, FCC from Bryan N. Tramont, Esq., Wilkinson Barker Knauer, LLP, IB Docket No. 08-184 *et al.* at 1, 3-5 (July 6, 2010) (“Verizon July 6th *Ex Parte*”).

² See, e.g., “Mobile WiMAX: The 4G Revolution Has Begun,” Version 1.0 at 12, available at http://www4.sprint.com/servlet/whitepapers/dbdownload/Mobile_WiMAX_The_4G_Revolution_Has_Begun_Jan2010.pdf?table=whp_item_file&blob=item_file&keyname=item_id&keyvalue=%274v994ya%27; Richard Martin, *Sprint Wins In WiMax Deal, But Risks Still Loom*, InformationWeek, May 7, 2008, available at <http://www.informationweek.com/news/mobility/wifiwimax/showArticle.jhtml?articleID=207600572>; see also Verizon July 6th *Ex Parte* at 4.

³ Andrew Parker, *Sprint’s 4G Move Opens Way to Merger*, Financial Times, Jul. 12, 2010 (emphasis added), available at <http://www.ft.com/cms/s/0/c4d6eb6a-8de0-11df-9153-00144feab49a.html>.

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its partnership with Clearwire has “the largest spectrum position of any company in America.”⁴ Verizon Wireless has previously expressed its strong objection to the way the conditions were imposed – at the last minute, with no prior notice to Verizon Wireless and no opportunity for it to comment – in violation of the law and Commission precedent.⁵ Indeed, Commissioner Baker has recently described the conditions as both “arbitrary” and “contrary to Congress’ intent in setting up the light-touch framework for wireless.”⁶

Sprint’s recent statement further underscores that the conditions that the Bureau’s selectively and arbitrarily imposed on Verizon Wireless (and AT&T) in the *SkyTerra-Harbinger Order* are untenable and clearly unlawful. Accordingly, the conditions either should be rescinded altogether and considered, if at all, on an industry-wide basis in the upcoming *MSS Spectrum Flexibility NPRM and NOI*, or revised as an industry-wide condition (including specifically Sprint Nextel).

Pursuant to Section 1.1206 of the Commission’s rules, this *ex parte* presentation is being filed electronically in this proceeding. Should you have questions regarding this filing, please contact the undersigned.

Respectfully submitted,

/s/ Bryan N. Tramont

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⁴ *Sprint Wins In WiMax Deal, But Risks Still Loom*, *supra* note 2 (quoting Sprint CEO Dan Hesse).

⁵ *See, e.g.*, Verizon Pet. for Recon. at 7-9, 11-14; Verizon Reply at 1-5.

⁶ *See* Blog of Commissioner Meredith Attwell Baker, “But it works for wireless...” (posted July 12, 2010), available at <http://reboot.fcc.gov/commissioners/baker/blog>.