

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

In the Matter of)
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)
Annual Report to Congress on Status of) IB Docket No. 06-67
Competition in the Satellite Services Market)

COMMENTS OF THE SATELLITE INDUSTRY ASSOCIATION

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April 19, 2006

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The Satellite Industry Association (“SIA”) is pleased to submit these comments in response to the March 20, 2006 Public Notice of the International Bureau seeking information on the state of competition in the markets for domestic and international satellite services.¹ SIA is a U.S. based trade association representing the leading satellite operators, service providers, manufacturers, launch services providers, remote sensing operators, and ground equipment suppliers, and is the unified voice of the U.S. satellite industry on policy, regulatory, and legislative issues affecting the satellite business. SIA is filing these comments to provide an industry-wide consensus perspective on certain selected issues raised by the Public Notice.²

¹ *IB Invites Comment for Annual Report to Congress on Status of Competition in the Satellite Services Market*, DA 06-635 (Mar. 20, 2006) (Public Notice) (“Notice”).

² SIA Executive Members include: Artel Inc.; The Boeing Company; The DirecTV Group; Globalstar LLC; Hughes Network Systems LLC; ICO Global Communications; Integral Systems, Inc.; Intelsat, Ltd.; Iridium Satellite LLC; Lockheed Martin Corp.; Loral Space & Communications Inc.; Mobile Satellite Ventures LP; Northrop Grumman Corporation; PanAmSat Corporation; SES Americom, Inc.; and TerreStar Networks Inc.; and Associate Members include: ATK Inc.; EMC Inc.; Eutelsat Inc.; Inmarsat plc.; IOT Systems; Marshall Communications Corp.; New Skies Satellites Inc.; Spacecom Corp.; Stratos Global Corp.

I. INTRODUCTION AND OVERVIEW OF SATELLITE SERVICES

The communications market is highly competitive. In addition to competing with one another and with satellite resellers, satellite operators face competition from numerous terrestrial sources.

Satellite technology has unique characteristics that make satellites particularly well-suited to providing rural/remote, disaster recovery and homeland security services. The public interest benefits of these services are unparalleled. As the Commission produces its report to Congress on the status of satellite competition, SIA asks it to keep these unique characteristics and benefits in mind.

To begin, SIA notes that broadband services are essential to rural, un-served, and underserved consumer broadband users. Neither terrestrial wireline nor terrestrial wireless service providers are able to provide the ubiquitous services so urgently needed by communities in rural America. In many rural areas, satellite services have proven to be the most attractive option available to those seeking multi-channel video, broadband internet, advanced data, and essential business telecommunications services.

Additionally, satellite services played a critical role before, during, and after many of the most devastating natural and man-made disasters in recent memory. From the first World Trade Center bombing to 9/11; from the 2004 Asian Tsunami, to the earthquakes in Pakistan, and the recent 2005 hurricane season in the United States; in many of the affected areas, satellites were key in the hours, days, and weeks following these events. The commercial satellite industry also provided over 80% of the satellite communications needs during Operations Enduring Freedom and Iraqi Freedom.

Finally, it is important to note that satellite services have flourished over the past decade while substantially improving spectrum efficiency. Technological advances have translated into

more efficient satellite and earth station antennas, higher-order modulation techniques, analog to digital conversion, use of smaller antennas, new coding, and multiple access techniques. For example, the conversion of TV signals from analog to digital has allowed the wholesale distribution of six video channels in a 36-MHz transponder instead of typically one video channel per transponder. This increase in technical efficiency has led to the distribution of more video channels, created more choices for the end user, and thus enhanced competition.

II. THE FCC'S REPORT TO CONGRESS SHOULD REFLECT THE ACTUAL COMPETITIVE CONDITIONS FACING SATELLITE OPERATORS

Congress has directed the FCC to report on three issues relating to the competitive conditions faced by satellite operators:

- (1) the “number and market share of competitors”;
- (2) whether there is “effective competition”; and
- (3) any foreign markets in which legal or regulatory practices restrict access to the market for satellite services in an anticompetitive manner.³

As explained below, the Commission’s report should strive to reflect the actual competitive conditions facing satellites by considering competition from all sources and avoiding geographic and product markets that are inconsistent with the technological characteristics of satellite services and the realities of consumer choice.

A. The FCC Should Consider Competition From All Sources and All Relevant Competitors

The Commission’s response to Congress’ broad inquiry should not be limited, as suggested in the *Notice*, to only satellite-delivered communications services. Instead, the

³ Communications Satellite Act – Amendment, Pub. L. No. 109-34, 119 Stat. 377 (2005) (“Amendment Act”).

Commission should, as proposed elsewhere in the *Notice*,⁴ consider the actual competitive conditions facing satellite operators that provide communications services, which often includes competition from terrestrial service providers.⁵

Indeed, the FCC has assumed a comprehensive approach to competition analysis in similar proceedings.⁶ In the annual video programming and CMRS reports, the FCC considers all relevant terrestrial and satellite providers. For example, the Commission has sought to “obtain[] a complete picture of the status of competition” in video programming by looking beyond multichannel video programming distributors (“MVPDs”) to “other technologies not explicitly included within the statutory definition that may have a constraining effect on cable.”⁷ Most recently, the agency considered video competition from non-traditional sources such as electric and gas utilities, CMRS providers, internet video, and home video sales and rentals, as well as between cable and DBS providers.⁸ Similarly, the most recent CMRS report analyzed

⁴ In the *Notice*, the International Bureau states that it “intends to adopt for this report an approach... similar to the competition reports compiled by the Commission to evaluate competition in the video services and commercial mobile radio services (CMRS) markets.” *Notice* at 2.

⁵ At the same time, the Commission should remain cognizant of the differing technological and service characteristics of satellites and competing modes of wireless and wireline terrestrial communications, which often warrant different regulatory treatment.

⁶ *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, First Report, 9 FCC Rcd 7442, ¶ 10 (1994) (“First Video Programming Report”) (stating that the Commission would conduct a “fuller economic analysis of the industry” to determine whether there is “effective competition,” rather than mechanically applying the statutory definition).

⁷ *First Video Programming Report* at ¶ 10.

⁸ *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Twelfth Annual Report, FCC 06-11 (2006) (“Twelfth Video Programming Report”).

not only traditional wireless carriers and MSS carriers, but also the role of wireline-wireless substitution and emerging technologies such as Wi-Fi.⁹

SIA urges the Commission to adhere to this precedent by providing in its report a realistic view of the competition satellite operators face from all sources. In doing so, the Commission should consider whether customers have alternatives, including terrestrial alternatives, for satisfying their communications requirements. This approach is consistent with the Commission's prior finding in the CMRS context that services are in the same market if consumers view them as close substitutes¹⁰ – *i.e.*, if services are essentially interchangeable from the perspective of most consumers. This approach is also consistent with the Wireless Bureau's recent proposal to evaluate CMRS competition by analyzing service availability and deployment rather than explicitly defining discrete product markets.¹¹

B. The Product and Geographic Markets Proposed in the *Notice* Would Not Provide Congress With an Accurate Picture of Competition

The product and geographic market definitions proposed in the *Notice* would not provide Congress with an accurate picture of competition because they are inconsistent with the technological characteristics of satellite services and the realities of consumer choice. With respect to product markets, the Commission proposes to divide satellite services into “video,” “audio,” and “telecommunications,” and seeks information on the market participants, sales,

⁹ *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, Tenth Report, 20 FCC Rcd 15908 (2005) (“Tenth CMRS Report”).

¹⁰ *Tenth CMRS Report* ¶ 21.

¹¹ *See WT B Seeks Comment on CMRS Market Competition*, WT Docket No. 06-17, DA 06-62 (Jan. 18, 2006) (Public Notice).

capacity, and market shares for each category.¹² However, given the flexible nature of modern satellites, it is often impossible to meaningfully assign their capacity among the three proposed “product markets.” A satellite can be used for video, audio, telecommunications, or any combination thereof. A given fixed-satellite service (“FSS”) transponder, for example, can be used to distribute direct-to-consumer video programming, audio news feeds, or internet services. Thus, available capacity cannot be allocated to a product category until a customer utilizes it for a specific purpose. Even then, a customer is not necessarily required to commit to a particular use when it contracts for the capacity. The customer is also often free to use the capacity for more than one category of service, change its use over time, or further resell all or some of the capacity to third parties for flexible uses without the satellite operator’s involvement.

Increasing migration to IP-enabled services will further blur any distinctions between “video,” “audio,” and “telecommunications.” For example, consumers will soon be able to view popular ABC programming (until now, a “video” service) from ABC’s web site over a direct-to-home satellite internet connection (a “telecommunications” service).¹³ Thus, evolving technologies will make it increasingly unrealistic to draw meaningful lines among product offerings.

The Commission also proposes “domestic,” “international,” and “foreign” geographic markets based on traditional regulatory categories. However, as the Commission has previously recognized, “[d]ue to the flexible nature of satellite coverage, each satellite can cover various countries and can be available to all those countries within its footprint.”¹⁴ An NGSO satellite

¹² *Notice* at 2-3.

¹³ *New York Times*, “Disney to Offer Some ABC Shows Free on the Web” (Apr. 10, 2006).

¹⁴ FCC, 2004 Section 43.82 Circuit Status Data, at 4 n.12 (Dec. 2005) (“2004 Circuit Status Report”).

system is technically capable of providing service anywhere in the world. A GSO satellite is technically capable of providing service to and from any location within its footprint, whether the location is within or outside the U.S. In addition, available capacity can be relocated or repointed to respond to demand. The FCC provides a streamlined “fleet management” modification process to facilitate the ability of satellite operators to relocate satellites to meet customer needs.¹⁵ Thus, “there is no accurate way to calculate the fixed amount of capacity that can be allocated to any given country for any specific time frame.”¹⁶

Furthermore, the Commission policies established in the *DISCO I* and *II* orders reflect a move away from geographic rigidity. In the *DISCO I* Order, the Commission eliminated the regulatory distinction between domestic and international satellite systems and permitted all U.S.-licensed FSS systems, mobile satellite-service (“MSS”) systems and direct-broadcast satellite service (“DBS”) systems to offer both domestic and international services within their footprints.¹⁷ In the *DISCO II Order*, the FCC provided mechanisms for foreign-licensed satellites to provide U.S. service.¹⁸ Today, most U.S.-licensed satellite operators provide service both domestically and internationally, as do foreign-licensed satellites on the Permitted Space Station List.

¹⁵ 47 C.F.R. § 25.118(e).

¹⁶ 2004 *Circuit Status Report* at 4 n.12.

¹⁷ *Amendment to the Commission's Regulatory Policies Governing Domestic Fixed Satellites and Separate International Satellite Systems*, 11 FCC Rcd 2429 (1996) (“*DISCO I Order*”).

¹⁸ *Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Satellites Providing Domestic and International Service in the United States*, Report and Order, 12 FCC Rcd 24094 (1997) (“*DISCO II Order*”).

III. SATELLITE OPERATORS FACE EXTENSIVE COMPETITION IN MOST SERVICES

Section 4 of the Amendment Act asks the Commission to identify “the number and market share of competitors in domestic and international satellite markets” and whether there is “effective competition.” By any measure, most customers considering satellite services have many options available to them.

Many customers considering the use of satellite services are likely to have three categories of alternative providers: facilities-based satellite operators with coverage of the desired service area; resellers of satellite capacity; and terrestrial providers with connectivity to the desired endpoints for the communications. Facilities-based satellite operators with U.S. coverage and market access are numerous. They include Intelsat, SES Americom/New Skies, PanAmSat, Loral Skynet, Telesat Canada, Satmex, Eutelsat, DIRECTV, Echostar, Hughes Communications, Inc., Sirius Satellite Radio, XM Satellite Radio, Iridium, Inmarsat plc, Globalstar, and MSV. Two more, ICO and Terrestar, are expected to join these operators in the next few years. Satellite resellers are plentiful as well. For many of the services that can be provided by satellite, there are numerous terrestrial competitors – ranging from wholesale submarine and terrestrial cable operators to the many wireline and wireless communications providers that transmit video, audio, voice, and data.¹⁹

¹⁹ The FCC has recently allocated substantial amounts of satellite spectrum for terrestrial use. *See, e.g. Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, Including Third Generation Wireless Systems, The Establishment of Policies and Service Rules for the Mobile-Satellite Service in the 2 GHz Band*, Third Report and Order, Third Notice of Proposed Rulemaking and Second Memorandum Opinion And Order, 18 FCC Rcd 2223 (2003); *Review of the Spectrum Sharing Plan Among Non-Geostationary Satellite Orbit Mobile Satellite Service Systems in the 1.6/2.4 GHz Bands*, Report and Order, Fourth Report and Order, and Further Notice of Proposed Rulemaking, 19 FCC Rcd 13356 (2004); *Wireless Operations in the 3650-3700 MHz Band, Rules For Wireless Broadband Services in the 3650-3700 MHz Band, Additional Spectrum For Unlicensed Devices Below 900 MHz and in the 3 GHz Band, Amendment Of The Commission's Rules With Regard to the 3650-3700 MHz Government Transfer Band*, Report and Order and Memorandum Opinion and Order, 20 FCC Rcd 6502 (2005). It is important for satellite operators to at least retain (if not expand) capacity to maintain the ability to compete with terrestrial

In addition, most providers in each category have the ability to provide both domestic and international services. A few examples of the competition that satellite operators face in seeking to serve their customers are given below.

Point-to-point fixed communications. Satellite providers of point-to-point fixed communications compete today in a communications market characterized by increasing convergence. The FCC has, for example, long recognized that submarine cable is an effective substitute for satellite capacity on international telecommunications routes.²⁰ Fiber deployment has grown dramatically on both domestic and international routes over the past decade. In the last ten years, the supply of lit fiber-based capacity has increased over a thousand-fold between many North American cities²¹ and over a hundred-fold on trans-Atlantic and trans-Pacific routes.²² As a result, today's customers have numerous choices between satellite and terrestrial networks for their point-to-point communications needs. To list just a few examples, both video programmers and distributors are turning to terrestrial cable as an alternative provider of video distribution and contribution.²³ Therefore, the competitive role of terrestrial providers must be considered in any meaningful analysis of the markets in which fixed satellite service providers operate.

providers and provide innovative and cost-effective services to consumers, especially services related to emergency response, homeland security, and rural connectivity for which satellite systems are particularly well suited.

²⁰ *Comsat Corporation, Petition Pursuant to Section 10(c) of the Communications Act of 1934, as amended, for Forbearance from Dominant Carrier Regulation and for Reclassification as a Non-Dominant Carrier, Order and Notice of Proposed Rulemaking*, 13 FCC Rcd 14083 (1998) ("Comsat Non-Dominance Order").

²¹ Telegeography, *Terrestrial Bandwidth 2004 Executive Summary*.

²² FCC 2003 Section 43.82 Circuit Status Data, Table 7 (Dec. 2004).

²³ According to a presentation at the FCC's 2005 Satellite Forum, about one half of CNN's domestic news feeds arrive at its Atlanta headquarters over fiber optic terrestrial video paths. See Presentation of Dick Tauber, VP, Transmission Systems & New Technology CNN (Mar. 21, 2005) available at http://www.fcc.gov/ib/sd/forum/ppt/Dick_Tauber_FCC.ppt.

Mobile communications. There are several providers of facilities-based mobile satellite communications, as well as dozens of resellers. These entities provide service on land, at sea, or in the air. Mobile satellite services include both voice and data, both broadband and narrowband, and can be provided over a wide variety of devices ranging from handheld to larger terminals. MSS providers operate in a climate in which mobile communications have become increasingly pervasive, as terrestrial operators grow their businesses both in enterprise and consumer markets.

Direct-to-home video. DBS operators compete in an increasingly crowded field of terrestrial wireline and wireless providers for delivering direct-to-consumer video and audio. As the Commission has recognized in its Annual Video Competition Reports, satellite DTH is but a small part of a much larger group of operators competing for viewers.²⁴ This sector is dominated by large cable operators, and the introduction of IP video technology has accelerated entry by new players – including the RBOCs, other LECs, and broadband service providers. Many of these firms can offer a bundle of services that DTH operators currently do not. In addition, viewers have over-the-air television and in-home DVD options available to them that compete directly with DTH offerings. In order to remain competitive, DTH operators have continued to invest in new technologies that enhance spectral efficiency of their systems and deliver innovative services to consumers.

Mobile audio. Consumer options for mobile audio are increasing daily, and satellite radio is just one option in this rapidly changing market. Over-the-air terrestrial broadcast radio increasingly includes digital as well as analog options.²⁵ Listeners today can purchase music through their wireless carriers for their cell phones, or buy music online for download to iPods

²⁴ *Twelfth Video Programming Report* at ¶ 3.

²⁵ A list of radio stations broadcasting digitally is available at HD Radio: Stations on-the-air, Ibiquity Digital, http://www.ibiquity.com/hdradio/hdradio_hdstations.htm (last visited Apr. 18, 2006).

and other mobile devices. Streaming internet radio, too, will become an increasingly “mobile” option as wireless carriers roll out high-speed data services that allow on-the-go internet access.

IV. ACCESS TO FOREIGN MARKETS

SIA comments on the issue of market access for satellite services in Attachment 1. SIA’s attached white paper addresses market access issues for satellite services in a number of WTO member or candidate countries. The white paper highlights those issues that directly impact SIA’s membership.

V. CONCLUSION

As Chairman Martin recently observed “[a]dvances in technology are leading to a convergence of multiple platforms,” and “[t]his development of intermodal competition is fundamentally changing the way that both carriers and their customers use telecommunications and technologies.”²⁶ Satellite operators are keenly aware of these changes as they compete globally, across a wide range of services and offerings, often against services provided by increasingly robust and cost-effective fiber and terrestrial wireless networks. The Commission’s report should appropriately recognize the role of satellite operators in today’s competitive

²⁶ Remarks by Chairman Kevin J. Martin, FCC, to the NARUC Summer Meeting, Austin, TX (July 26, 2005), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-260312A1.pdf.

landscape. With their unique advantages due to their technological differences, satellites will meet this competitive challenge by continuing to provide innovative services and meeting the nation's rural and homeland security communications needs.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David Cavossa". The signature is written in a cursive style with a large initial "D" and a long, sweeping underline.

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April 19, 2006

ATTACHMENT 1



**PROMOTING MARKET ACCESS FOR
THE PROVISION OF SATELLITE SERVICES**

Identifying Necessary Elements in Accession Countries
WTO Commitments and Seeking to Improve
Existing WTO Offers Relevant to
the Provision of Satellite Services

Background Paper

The Satellite Industry Association (“SIA”) is a U.S.-based trade association representing the leading satellite manufacturers, fixed satellite operators (FSS), mobile satellite operators (MSS), satellite service providers, and launch service companies throughout the globe. SIA serves as an advocate for the U.S. commercial satellite industry on regulatory and policy issues common to its members. With its member companies providing a broad range of manufactured products and services, SIA represents the unified voice of the commercial satellite industry.¹

SIA offers this white paper addressing those issues which directly impact its membership and on which there is a consensus view of the membership.

I. COUNTRIES WITH WTO ACCESSIONS IN PROGRESS

<i>Algeria</i>	<i>Samoa</i>
<i>Andorra</i>	<i>Saudi Arabia</i>
<i>Azerbaijan</i>	<i>Serbia and Montenegro</i>
<i>Bahamas</i>	<i>Seychelles</i>
<i>Belarus</i>	<i>Sudan</i>
<i>Bhutan</i>	<i>Tajikistan</i>
<i>Bosnia and Herzegovina</i>	<i>Tonga</i>
<i>Cape Verde</i>	<i>Ukraine</i>
<i>Ethiopia</i>	<i>Uzbekistan</i>
<i>Kazakhstan</i>	<i>Vanuatu</i>
<i>Lao People's Democratic Republic</i>	<i>Vietnam</i>
<i>Lebanese Republic</i>	<i>Yemen</i>
<i>Russian Federation</i>	

¹ SIA Executive Members include: Artel Inc.; The Boeing Company; The DirecTV Group; Globalstar LLC; Hughes Network Systems LLC; ICO Global Communications; Integral Systems, Inc.; Intelsat, Ltd.; Iridium Satellite LLC; Lockheed Martin Corp.; Loral Space & Communications Inc.; Mobile Satellite Ventures LP; Northrop Grumman Corporation; PanAmSat Corporation; SES Americom, Inc.; and TerreStar Networks Inc.; and Associate Members include: ATK Inc.; EMC Inc.; Eutelsat Inc.; Inmarsat plc.; IOT Systems; Marshall Communications Corp.; New Skies Satellites Inc.; Spacecom Corp.; Stratos Global Corp.

II. NECESSARY ELEMENTS IN WTO OFFERS FROM ACCESSION CANDIDATES

In the context of the discussions regarding the ascension to the WTO of the countries listed above, the SIA suggests adoption of the following principles in their offers:

1. **Provide Transparent, Non-Discriminatory Procedures.** Licensing procedures should be streamlined and transparent and should be the same for earth stations, handsets, and all terminal equipment accessing domestic or foreign satellite systems. Countries should be encouraged to act on satellite access applications within a reasonable period of time, not to exceed six months.
2. **Delete Local Entity/Local Presence Requirements.** To be added to the Permitted Space Station List -- which allows a foreign satellite to be utilized in the United States -- a foreign satellite operator is NOT required to establish a local company. Such a requirement would be costly, burdensome and disadvantageous to a foreign operator. Similarly, many countries have blanket licensing procedures in place for handsets and portable terminals operating with foreign MSS systems without a local presence requirement.

Many administrations around the world grant market access authorizations to foreign satellite systems without requiring local establishment or incorporation. These countries recognize that it would be infeasible for global satellite operators to maintain corporate subsidiaries and offices in all countries in their coverage areas. To facilitate cross-border services, many countries require only a local post address to receive official licensing correspondence. The WTO accession candidate countries should make similar commitments that do not require foreign satellite operators to be licensed only through a local company.

3. **Provide National Treatment for Foreign Operators.** Most Favoured Nation ("MFN") exemptions and any other limitations that could put U.S. satellite operators at a disadvantage should be avoided.
4. **Eliminate Burdensome Frequency Coordination Requirements.** Market entry should not be denied if the multi-year coordination process has not been definitively completed; rather, the ITU frequency coordination process should address actual technical issues in a separate process.

In the United States, the Federal Communications Commission ("FCC") does not require an applicant to complete international coordination before granting that applicant's satellite system authorization to provide service in the United States. Rather, their authorizations are conditioned with the requirement to undertake ITU coordination. WTO member countries should adopt similar policies and not attempt to block the

entrance by U.S. satellite operators simply by requiring, and then withholding, completion of international coordination.

- 5. Eliminate Monopoly.** No special monopoly status should be afforded to incumbent telecommunications operators or satellite systems in such a way that they permit them to act as an intermediary in the sale of foreign space segment, or in the granting of access to MSS systems. Foreign operators should be able to sell space segment capacity directly to any licensed earth station operator in the accession countries – *e.g.*, to a broadcaster, telephone company, internet service provider, corporation/enterprise, VSAT service provider, etc.

In the case of MSS systems, end-users should be able to access their preferred MSS satellite provider without going through a local company or a local monopoly provider. Wherever spectrum tables provide for the exclusive operation of Global Mobile Personal Communication Services (GMPCS) the operation of MSS handsets should not require individual authorizations but should instead be operable based on blanket authorizations. There should be no customs duties or barriers to impede the temporary importation of MSS handsets and associated equipment by callers wishing to access MSS systems in country.

- 6. Permit the Transport of Broadcast Video Signals and Associated Audio Signals.**

The delivery of broadcast video services via satellite should not be excluded from a country's WTO offer. Governments should allow foreign satellite operators to deliver video programming and any associated audio signals to, for example, cable head ends, since this is merely a transport service of the content developed by licensed broadcasters. The foreign satellite operator does not intervene at the content or programming level.

- 7. Countries Should not Mandate Deployment of Particular Technologies to Achieve Technical and Policy Requirements.** For example, in the case of any security requirements imposed on MSS operators, the MSS operator should be able to demonstrate compliance via the most advanced technical means available, without regard to particular technologies or configurations.

II. WTO COUNTRIES WHOSE OFFERS NEED TO BE IMPROVED

Bangladesh

Brazil

China

Egypt

India

Indonesia

Israel

Kazakhstan (Accession candidate)

Korea

Malaysia

Mexico

Philippines

Russian Federation (Accession candidate)

Saudi Arabia

South Africa

Thailand

Vietnam (Accession Candidate)

Venezuela

1. Bangladesh

- Local Presence: A satellite operator is required to have a local partner in order to obtain a license and provide space segment for use in Bangladesh. This local presence requirement should be eliminated.

2. Brazil

- Local Entity/Local Presence: Brazil's General Telecommunications Law, No. 9.472 requires that foreign satellite operators provide their services in Brazil through an entity constituted under Brazilian laws and with its administrative headquarters in Brazil, which acts as the legal representative of the foreign satellite capacity in the country. This legal entity requirement should be eliminated, as Brazilian satellites do not face the same requirements when serving the U.S. market. The requirement also impedes development of multiple equally situated competitive providers by favoring a single provider. Further, if all WTO member countries imposed such a requirement satellite operators would be burdened with maintaining corporate entities in all countries of their coverage – an unsustainable corporate structure and expense.
- National Treatment: Local regulations require that preference be given to Brazilian satellite provider companies for the provision of satellite telecommunications services, as long as there is equivalency with other companies. This preference should be eliminated.
- Frequency Coordination Requirement: Local regulations require foreign satellite operators to complete a technical coordination with the local regulator (ANATEL) in accordance with ITU regulations. This requirement often serves as a market barrier and should be eliminated.
- Excessive Fees: Foreign satellite operators are subject to excessive fees as a result of the newly-adopted framework for landing rights charges in Brazil, which uses a fee calculation formula that takes into account the last price paid at auction for the right to operate a Brazilian orbital slot. It is important to note that Brazilian satellite operators are not required to pay a fee to be included in the “Permitted Space Stations List” and, thus, be allowed to serve the U.S.

3. China

- National Treatment: National treatment is not provided to foreign satellite operators.
- Monopoly: Chinasat continues to have a monopoly for the provision of satellite services.
- Transparency: There is a lack of transparency in satellite regulation.

4. *Egypt*

- Transparency: There are no established regulations; regulatory policies are unknown and/or ad hoc.
- Duopoly: Only two licensed operators can provide satellite services in Egypt; however, the incumbent, Nilesat, is still the dominant provider.

5. *India*

- Restrictions on the Use of Foreign Satellite Capacity for Direct-to-Home (“DTH”) Services: The Ministry of Information & Broadcasting (“MIB”) has established guidelines that provide a *preference* for Indian satellites for DTH services, but which allow the use of foreign satellites if the foreign satellite has completed the international frequency coordination process with the domestic INSAT satellite system. However, in practice, DTH licensees are not able to contract directly with foreign operators even if the coordination has been completed; the foreign satellite capacity must be procured through the Indian Space Research Organization (“ISRO”), the operator of the INSAT system. ISRO only permits such use if it has not available capacity on its system.
- Lack of Clarity Regarding Department of Space (“DOS”) Role: The Department of Telecommunication’s New Telecom Policy 1999 stated that users of transponder capacity would be able to access both domestic and foreign satellites, in consultation with the Department of Space, of which ISRO forms part. While it might be necessary for the DOS to ensure that foreign satellites are completing international coordination agreements with the INSAT system, there are no technical or commercial reasons why foreign satellite capacity should need to be procured through DOS (ISRO), a direct competitor of foreign satellite operators. This lack of clarity results in a competitive advantage for the domestic Indian satellite system.
- Ku-band Restrictions: Ku-band is banned for use of broadcasting to cable head ends. There is no logical reason for this restriction, given that Ku-band capacity is just as suitable for video distribution as is C-band capacity, which is currently approved for this application in India. This restriction should be removed.
- Security Concerns: Security restrictions on MSS operators require the deployment of particular gateway infrastructure despite the fact that more advanced technologies can meet policy concerns.

6. *Indonesia*

- National Treatment: There is a failure to provide national treatment for foreign operators. The current duopoly for satellite services results in a preference for local operator, which should be eliminated.

- Local Entity/Local Presence: A local entity with majority Indonesian ownership and operation is required. Satellite operators are not permitted to establish local holding companies for licensing purposes. Only fully operational local companies may be licensed and only one such company is recognized at a time.
- Monopoly: International services (packet-switched data, Internet, etc.) can only be provided through networks of PT Indosat and PT Satelindo, which have a duopoly until 2005.
- Local Entity/Local Presence: A local entity with majority Indonesian ownership (maximum direct foreign invest 49%) must be established. Satellite operators are not permitted to establish local holding companies for licensing purposes. Only fully operational local companies may be licensed and only one such company is recognized at a time
- Excessive Fees: Extremely high fees for each earth station must to be paid to PT Indosat and PT Satelindo.
- Transparency: There is a lack of transparency on satellite regulation.

7. *Israel*

- Local Presence: Local presence with registration is authorized discretionally by Ministry of Justice with severe rules on foreign companies' incorporation (citizenship, etc.). Additionally, foreign ownership is limited to 74% of all international services.
- National Treatment: National treatment is not afforded to foreign operators - only use of Bezeq infrastructure and networks is permitted

8. *Kazakhstan*

- National Treatment: Kazakhstan is planning to launch its own national satellite (KazSat 1) in June 2006. . The government has signaled –through correspondence with satellite service providers – that it intends to require service providers to move certain services to the KazSat satellite, once launched. There should be no preferential or special treatment *vis-à-vis* any of the other local or global satellite systems.
- Monopoly: Kazakh Telecom's monopoly, scheduled to end in January 2007, should be terminated.
- Local Presence: Limitations on foreign investment should be removed prior to allowing Kazakhstan to enter the WTO. Kazakhstan should not impose any gateway requirements on the provision of VSAT services. That is, the country should permit the use of VSAT systems whose HUB stations are located outside of the country.

- Transport of Video Signals should be allowed: The Kazakhstan government should not attempt to exclude Broadcasters from the entities which can purchase space segment directly from the foreign satellite operators.

9. Korea

- National Treatment: There is a failure to provide national treatment for foreign operators and preference for local operators. Foreign operators can only provide satellite capacity to Korean customers via the few licensed Korean carriers (Korea Telecom, Dacom, Onse).

10. Malaysia

- National Treatment: There is a failure to provide national treatment for foreign operators and preference for local operator.

11. Mexico

- Local Presence/Foreign Ownership Restrictions: There is a 49% cap on foreign ownership of the entity which holds Concession to provide space segment. Additionally, space segment must be contracted and invoiced locally through that Mexican entity. Mexican satellite operators are not subject to the same burdensome requirements when serving the U.S. market.
- Security Concerns: MSS Operators must deploy gateway earth stations that are otherwise not required to satisfy security policies. Newer technologies are available and, therefore, the gateway requirement serves as a barrier to market entry. The requirement to market only through an operating local company is also a barrier because few such companies exist with which to partner. Development of local expertise in new areas is blocked by this requirement.
- Substantial Fees: Mexico applies substantial spectrum usage fees, under the Federal Rights Law, which do not affect domestic and foreign satellites equally. Mexican satellite operators are not subject to the same burdensome requirements when serving the U.S. market. Additionally, prospective licensees must demonstrate local capital investments far in excess of actual requirements for marketing in country. With operational satellites in place, foreign operators have the technical capability to provide capacity and services to the country without needing to make internal capital investments. The internal capital investment requirements should be eliminated.

12. Philippines

- National Treatment/Local Preference: Failure to provide national treatment for foreign operators and preferential treatment for local satellite operator (“right of first refusal” for Mabuhay).

13. Russian Federation

- Transparency: Russian satellite regulation is not transparent. The legal requirements and administrative responsibilities associated with the provision of satellite services in Russia are not clearly defined.
- Local Entity/Local Presence: The Russian Federation should not require that U.S. operators establish a local company in order to provide satellite capacity to authorized entities. No similar requirement is applicable to Russian satellites wishing to serve the U.S. market.
- National Treatment: The Russian Federation (through Government Decree No. 88) establishes a preference for the use of Russian satellite communications systems. In addition, Order No. 97 of the Ministry of Information Technologies and Communications requires that the connection of communication centers (nodes) located within the boundaries of the Russian Federation be done exclusively through communication lines that run across the territory of the Russia or connected via communication satellites controlled from Russia. Any preference or special treatment for Russian satellites should be removed from Russia's WTO offer. There should be no first right of refusal for the Russian Satellite Communications Company on the sale of satellite capacity in Russia, nor should there be a requirement to sell satellite capacity through said entity.
- Security Concerns: The Russian Federation has cited security concerns as a reason for requiring the deployment of earth station gateways for MSS services. This requirement has been superseded by technical innovation. Security concerns and policies should not require deployment of specific technologies in ways that favor local operators.
- Frequency Coordination: Market entry should not be denied if the multi-year coordination has not been definitively completed; rather, the ITU frequency coordination process should address actual technical issues in a separate process.
- Monopoly: No special monopoly status should be afforded to Rostelecom, nor should said company be required to act as an intermediary in the sale of foreign space segment.
- Transport of Video Signals Should be Allowed: The Russian Federation should not permit broadcasters to purchase space segment directly from foreign satellite operators.
- Certification Process: There is an expensive certification process for anyone who wants to sell equipment in Russia or wants a license. This constitutes a barrier to entry. Russia should recognize EC certifications and reduce or eliminate barriers to certification and sale or lease of terminals.

14. Saudi Arabia

- National Treatment/Local Preference: There is a failure to provide national treatment for foreign operators and preferential treatment for local satellite operator

15. South Africa

- Transparency: There is a lack of transparency in satellite regulation.
- Foreign Ownership Restrictions: Foreign ownership restrictions should be eliminated.
- Monopoly: The current duopoly should be lifted and foreign satellite operators should be allowed to provide space segment and satellite services directly to authorized entities in South Africa.
- Excessive License Fees: South Africa imposes extraordinarily high license fees for Mobile Satellite Service. South Africa should apply reasonable fees for all similarly situated providers.

16. Thailand

- Monopoly: There is a monopoly for international (CAT) and domestic (TOT) services, which results in a failure to provide national treatment for foreign operators and impairs market entry.

17. Vietnam

- National Treatment: Vietnam has its own satellite operator (Vinasat) which has not yet launched its first satellite. Once launched, there should be no preferential or special treatment vis-à-vis any of the other local or global satellite systems. Nor should Vinasat enjoy any special privileges in the provision of interim capacity it may lease from existing satellite systems.
- Monopoly: VNPT should not be allowed to serve as an intermediary for the sale of space segment. Operators should be able to provide satellite capacity directly to all licensed entities.
- Transparency: Satellite regulations in Vietnam are not transparent.

18. Venezuela

- National Treatment: Venezuela's Organic Telecommunications Law calls for preferential treatment of Venezuelan satellites, despite the fact that the country's WTO offer did not include an MFN exemption on satellite services. Furthermore, recently released draft regulations provide an additional preference for satellites of "international entities" by subjecting them to more lax local presence requirements than those imposed on other satellite operators (both foreign and domestic).

- Local Presence: Draft regulations classify the sale of space segment as a “service”, requiring a foreign operator to obtain two instruments of authorization, both of which trigger a domicile requirement in accordance with Venezuelan law. Additionally, the foreign operator must name a technical and commercial representative, all of which will drastically increase the cost of doing business in Venezuela. These burdensome requirements should be eliminated or minimized.

- Reciprocity: Draft regulations call for the local regulator to sign bilateral reciprocity agreements with the Administrations notifying foreign orbital positions. This would seem inconsistent with Venezuela’s WTO offer, which did not include an exemption for satellite services. The Venezuelan government should be encouraged to exempt WTO-member countries from the reciprocity requirement.