

**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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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 socio-economic 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 in mind 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 service 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 WTB 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 fixed-satellite service (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.

III. SATELLITE OPERATORS FACE EXTENSIVE COMPETITION IN MOST SERVICES

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*”).

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 reallocated 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 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.

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.

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 markets 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 "C".

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