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

In the Matter of	)	
Second Annual Report to Congress on Status of Competition in the Provision of Satellite Services	)	IB Docket No. 07-252

SUPPLEMENTAL COMMENTS OF THE SATELLITE INDUSTRY ASSOCIATION

The Satellite Industry Association ("SIA") hereby submits these supplemental comments to provide further information in response to the Commission's Public Notice of November 7, 2007, which invited comments on the state of competition in the provision of satellite services.[1] SIA filed comments in this matter to assist the Commission in preparing its second annual report to Congress and to highlight for the Commission the extensive competition faced by satellite operators for communications services. In those comments, SIA provided the Commission with information on the actual competition faced by satellite operators from all sources and with information on access to foreign markets.

These supplemental comments provide, as Attachment A, updated comments on foreign market access issues regarding satellite services. The attached information contains SIA's December 2007 comments to the Office of the United States Trade Representative pursuant to section 1377 of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. § 3106). This

[1] *IB Invites Comment for Second Annual Report to Congress on Status of Competition in the Satellite Services Market*, DA 07-4562, IB Docket No. 07-252 (released Nov. 7, 2007) ("Public Notice").

material supplements the information SIA submitted to the Commission as Attachment 2 to its comments filed December 7, 2007.

Respectfully submitted,

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January 4, 2008

ATTACHMENT A

VIA E-MAIL
FR0717@ustr.eop.gov

December 20, 2007

Ms. Gloria Blue
Executive Secretary, Trade Policy Staff Committee
ATTN: Section 1377 Comments
Office of the U.S. Trade Representative
600 17th Street, N.W.
Washington, DC 20036

Dear Ms. Blue:

The Satellite Industry Association ("SIA") welcomes the opportunity to submit the following comments in response to the recent notice issued by the Office of the U.S. Trade Representative pursuant to section 1377 of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. § 3106) seeking information on the operation and effectiveness of U.S. telecommunications trade agreements.

SIA is a U.S.-based trade association providing worldwide representation of the leading satellite operators, service providers, manufacturers, launch services providers, remote sensing operators, and ground equipment suppliers. SIA is the unified voice of the U.S. satellite industry on policy, regulatory, and legislative issues affecting the satellite business.[1]

SIA offers these comments in an effort to identify necessary elements that require review in the commitments made by accession countries to the World Trade Organization ("WTO"), and to improve existing offers by WTO members that are relevant to the provision of satellite services. These comments address those issues which directly impact its membership and on which there is a consensus view of the membership.

[1] SIA Executive Members include: Arrowhead Global Solutions Inc.; Artel Inc.; The Boeing Company; DataPath, Inc.; The DIRECTV Group; 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; SES Americom, Inc.; and TerreStar Networks Inc. Associate Members include: ATK Inc.; Constellation Networks Corp.; EchoStar Satellite LLC; EMC Inc.; Eutelsat Inc.; Inmarsat Inc.; IOT Systems; Marshall Communications Corp.; New Skies Satellites, Inc.; Spacecom Ltd.; Stratos Global Corp; SWE-DISH Satellite Systems; and WildBlue Communications, Inc.

Respectfully submitted,

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Encl.

I. COUNTRIES WITH WTO ACCESSIONS IN PROGRESS

Afghanistan
Algeria
Andorra
Azerbaijan
Bahamas
Belarus
Bhutan
Bosnia and Herzegovina
Cape Verde
Comoros
Ethiopia
Iran
Iraq
Kazakhstan
Lao People's Democratic Republic
Lebanese Republic
Libya
Montenegro
Russian Federation
Samoa
Sao Tomé and Principe
Serbia
Seychelles
Sudan
Tajikistan
Ukraine
Uzbekistán
Vanuatu
Yemen

A. 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, SIA suggests adoption of the following principles in their offers:

1. *Provide transparent, non-discriminatory procedures*. Licensing or authorization 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 (6) months.

2. *Delete or eliminate 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 the 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 Favored 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 frequency coordination process of the International Telecommunication Union ("ITU") 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 U.S. Rather, 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.

B. SPECIFIC ACCESSION DISCUSSIONS

In the context of the specific discussions regarding the ascension to the WTO of Kazakhstan and the Russian Federation, SIA wishes to underline the importance of adoption the following principles in their specific offers:

1. Kazakhstan

- National treatment: Kazakhstan has launched its own national satellite (KazSat 1), and has plans to launch and operate a second spacecraft. The government has signaled –through correspondence with satellite service providers – that it intends to require service providers in Kazakhstan to move certain services to the KazSat satellite system. There should be no preferential or special treatment *vis-à-vis* any of the other local or global satellite systems.

- 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: Kazakhstan should not attempt to exclude broadcasters from the entities which can purchase space segment directly from the foreign satellite operators.

2. 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 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 ("RSCC") 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 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.

II. WTO COUNTRIES WHOSE OFFERS NEED TO BE IMPROVED

Bangladesh
Brazil
China
Egypt
India
Israel
Korea
Malaysia
Mexico
Philippines
Saudi Arabia
South Africa
Thailand
Vietnam
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. The fee calculation formula used by ANATEL 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. market.

3. China

- National treatment: national treatment is not provided to foreign satellite operators China is a restricted satellite market. Foreign satellite operators are required to obtain government approval or enter into a contract with a "qualified domestic entity" in order to provide services in China. Foreign operators are prohibited from leasing transponder capacity directly to end-users without prior approval of the Ministry of Information and Industry ("MII"). All authorized satellite service providers in China are domestic companies (China Orient and Sinosat). These two companies are the only ones that hold a Basic Telecommunications Services ("BTS") operating license in China, and have recently announced a merger of their respective domestic satellite resources and services under a new entity to be named China Direct Broadcast Satellite Co., Ltd. (China DBSAT). In addition to these two companies, only AsiaSat and APT are allowed to provide services in China.

- Monopoly: Domestic companies in China continue to have a monopoly for the provision of satellite services.

- Transparency: there is a lack of transparency in satellite regulation in China.

4. Egypt

- Transparency: there are no established regulations; regulatory policies in Egypt are unknown and/or ad hoc.

- Lack of open competition: while Egypt has made recent strides towards competition, the market for the provision of satellite services in Egypt remains limited. Egypt has a national satellite operator (Nilesat) and four VSAT licensees. The four VSAT licensees (Alkan, Egyptian Satellite Channel, EgyptSAT and African Waves) can only use National Telecommunication Regulatory Authority (NTRA) approved space segment (which includes space segment from several international providers).

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 DOS, 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. Israel

- Local presence: local presence with registration is authorized discretionally by the Ministry of Justice with severe rules on foreign companies' incorporation (citizenship, etc.). Additionally, foreign ownership is limited to 74% of all international services.

- Lack of open competition: Companies seeking authorization to install and operate an earth station to access or use capacity on a foreign satellite in order to provide telecommunications services in Israel require a variety of permits and licenses (wireless license, telecommunications services license, type approval license, trading license, and special import license). These licenses are specifically tailored to the particular operator, rather than broadly defined. If the applicant for a wireless station license is a foreign company, then it must form a local subsidiary (either as a registered Israeli branch of a foreign company or as an Israeli registered subsidiary) to hold such license. In addition, the applicant for a wireless station license must not constitute a security risk to the State.

7. Korea

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

8. Malaysia

- National treatment: there is a failure to provide national treatment for foreign operators in Malaysia and preference is given to local operators. The Malaysia government has mandated that Malaysian government-related agencies use satellite service operated by local companies. Use of satellite services operated by local companies is not mandatory for private sector companies, although such use is "encouraged".

- Transparency: The Communications and Multimedia Commission implements and enforces the provisions of communications and multimedia laws in Malaysia, and also advises the Ministry of Energy, Communications and Multimedia on national policy objectives. When an applicant files for an earth station authorization, this authorization is reviewed by the Commission, which in turn makes a recommendation to the Ministry. The Ministry has broad "discretion" to grant or not to grant authorizations.

9. Mexico

- Local presence/foreign ownership restrictions: there is a 49% cap on foreign ownership of the entity which holds a concession to provide space segment in Mexico. 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.

10. Philippines

- National treatment/local preference: foreign operators are treated differently than domestic operators, and local satellite operator is given preferential treatment ("right of first refusal" for Mabuhay) for providing space segment capacity. The preference for local operators in the Philippines is found in Memorandum Circular No. 4-3-99.

- Local presence: foreign satellite operators actively seeking customers in the Philippines are required to establish a "local commercial presence".

11. Saudi Arabia

- National treatment/local preference: there is a failure to provide national treatment for foreign operators in Saudi Arabia and preferential treatment is given to local satellite operators.

12. South Africa

- Transparency: there is a lack of transparency in satellite regulation in South Africa.

- 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 fees: South Africa imposes extraordinarily high license fees for MSS. South Africa should apply reasonable fees for all similarly situated providers.

13. Thailand

- Monopoly: Shin Satellite has had an exclusive arrangement with the Communication Authority of Thailand ("CAT"), which results in the Thaicom satellite system being the *de facto* platform authorized in Thailand.

- Transparency: the National Telecommunications Commission ("NTC") has not developed any satellite related regulations.

14. Vietnam

- National treatment: Vietnam has its own satellite system (Vinasat) which has yet to be launched. Once launched, there should be no preferential or special treatment *vis-à-vis* any of the other local or global satellite systems. Vinasat should not enjoy any special privileges in the provision of interim capacity it may lease from existing satellite systems. Operators should be able to provide satellite capacity directly to all licensed entities.

- Transparency: satellite regulations in Vietnam are not transparent.

15. 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, draft regulations on satellite services 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 on satellite services 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 on satellite services 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.