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

In the Matter of	)	
	)	
Fourth Annual Report to Congress on Status of	)	IB Docket No. 10-99
Competition in the Satellite Services Industry	)	

REPLY COMMENTS OF SES WORLD SKIES

Joslyn Read
Daniel C.H. Mah
SES WORLD SKIES
1129 20th Street, NW, Suite 1000
Washington, DC 20036

Karis A. Hastings
Hogan Lovells US LLP
555 Thirteenth Street, N.W.
Washington, D.C. 20004

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SUMMARY

The ample record in this proceeding demonstrates that commercial satellite operators continue to face effective competition. As a result, the Commission should summarily reject unfounded requests for burdensome new regulations on satellite operators.

The Comments of the Satellite Industry Association ("SIA") provide detailed documentation of the growth in the satellite industry and the increasing number of alternatives available to consumers of satellite capacity. The SIA data conclusively show that satellite operators are subject to robust competition for both U.S. domestic and international services. Allegations to the contrary by CapRock, Spacenet and Microcom are unfounded, resting on flawed assumptions and analysis.

For example, the Commission has made clear that both terrestrial-based services and foreign-licensed satellites authorized to serve the U.S. must be taken into account in assessing the competitive landscape for satellite services, yet CapRock would have the Commission disregard the former and Spacenet inexplicably dismisses the latter. Both CapRock and Spacenet also complain about industry consolidation but ignore the fact that there have been no significant mergers among satellite operators since 2008, when the Commission last issued its analysis of satellite capacity markets and concluded that there was effective competition. Satellite capacity markets are at least as competitive today as they were in 2008, if not more so due to new entry, satellite service convergence and terrestrial competition. Similarly, Microcom's suggestion that satellite service to Alaska and Hawaii is inadequate is at odds with evidence showing that numerous satellites have coverage of these states and that terrestrial alternatives are also increasingly available.

Thus, the record demonstrates that there is effective competition in satellite capacity markets, and that there is no need for Commission intervention. CapRock presents the Commission with a laundry list of proposed new regulatory requirements for satellite operators, including restrictions on mergers, pricing, bundling, and resale, but fails to justify any of the measures. CapRock claims that its proposals would enhance competition, but the opposite is true – the mandates would impair satellite operators' ability to compete effectively against CapRock and others, reduce choices available to customers, and preclude efficiency-enhancing transactions. The Commission must dismiss CapRock's self-serving requests as unjustified intrusions into a vibrantly competitive environment.

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SES WORLD SKIES[1] hereby submits this reply to the comments of other parties filed in response to the International Bureau's Public Notice in the above-captioned proceeding seeking information on the state of competition in the provision of satellite services.[2] As discussed herein, the evidence before the Commission conclusively demonstrates that satellite operators face strong competition as they seek to gain and maintain customers who have an increasing number of alternative sources of capacity. Accordingly, the Commission should reaffirm its past determinations that commercial communications satellite services are subject to effective competition.[3] In light of these market conditions, the Commission should reject unsupported demands for new regulatory constraints on satellite operators.[4]

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[1] SES WORLD SKIES is the commercial brand name for the integrated operations of two indirect subsidiaries of SES S.A.: SES Americom, Inc. and New Skies Satellites B.V. (effective January 1, 2009). The new brand name does not affect the underlying legal entities that hold Commission authorizations or U.S. market access rights.

[2] International Bureau Invites Comment for Fourth Annual Report to Congress on Status of Competition in the Satellite Services Industry, DA 10-1353 (July 22, 2010) ("Public Notice").

[3] *See Annual Report and Analysis of Competitive Market Conditions with Respect to Domestic and International Satellite Communications Services*, First Report, 22 FCC Rcd 5954, 5955, 6011 (2007) ("First Report"); *Second Annual Report and Analysis of Competitive Market Conditions with Respect to Domestic and International Satellite Communications Services*, Second Report, 23 FCC Rcd 15170, 15171, 15201 (2008) ("Second Report").

[4] *See* Comments of CapRock Communications, Inc., IB Dkt No. 10-99, filed Aug. 23, 2010 ("CapRock Comments") at i-ii, 13.

I. THE RECORD DEMONSTRATES THAT SATELLITE CAPACITY MARKETS CONTINUE TO BE EFFECTIVELY COMPETITIVE

Since 2005, the Commission has been obligated to provide an annual report to Congress concerning satellite services competition.[5] In its initial report, issued in 2007, the Commission performed a detailed analysis of the markets in which satellite operators participate and determined that "the market for commercial communications satellite services is effectively competitive."[6] The follow-on report addressed updated information on satellite industry characteristics and market performance and once again concluded that "satellite services are subject to effective competition."[7]

The same conclusion is appropriate here based on the evidence before the Commission. As a member of the Satellite Industry Association ("SIA"), SES WORLD SKIES contributed to SIA's comprehensive comments describing the active and increasing competition confronting satellite service providers, both within the satellite industry and across technological platforms.[8] The SIA Comments detail the increases in recent years in the numbers of both commercial satellite operators and satellites – in the Americas region alone, 13 fixed-satellite service ("FSS") operators now provide coverage using roughly 95 spacecraft.[9] SIA also reports

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[5] The report is required by the Amendment to the Communications Satellite Act, Pub. L. No. 109-34, 119 Stat. 377 (2005), codified at 47 U.S.C. § 703.

[6] First Report, 22 FCC Rcd at 5955 (¶ 2).

[7] Second Report, 23 FCC Rcd at 15171 (¶ 3). The Second Report, issued in 2008, was based on 2007 data.

[8] *See* Comments of the Satellite Industry Association, IB Dkt No. 10-99, filed Aug. 23, 2010 ("SIA Comments") at 3-21.

[9] *Id*. at 3. The data for other global regions are as follows: Europe has 17 FSS operators with approximately 124 satellites; Asia has 25 FSS operators with approximately 137 satellites; and Africa and the Middle East have 21 FSS operators with approximately 123 satellites. *Id*. at 5-6.

on the significant number of new satellites that have been launched since 2007 or are planned for launch within the next few years by operators including Hughes, Embratel (Star One), Telesat, Venesat, Arsat, SatMex, ViaSat (WildBlue), Spacecom, Indosat and many others.[10]

As SIA discusses, there are also numerous providers of mobile satellite services ("MSS"): SIA identifies 7 MSS operators serving the U.S. and another 6 MSS systems with coverage outside the U.S.[11] The Commission has expressly recognized that there is growing competition between traditional FSS and MSS services.[12] SIA provides several examples of this type of satellite service convergence, noting that operators of MSS systems are increasingly capable of providing offerings to both fixed and mobile users, and that mobile services on land, sea and in the air are currently provided using both FSS and MSS platforms.[13]

SIA also demonstrates that satellite operators face growing competition from terrestrial sources.[14] In less than a decade, the number of African countries that depended solely on satellites for international connections was cut in half due to the deployment of new fiber optic cables.[15] Other regions also have seen significant growth, and SIA reports that 56 of the 61 countries identified by the Commission in 1998 as "thin routes" reliant on satellite for

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[10] *Id*. at 3-7.

[11] *Id*. at 9-10.

[12] *See SkyTerra Communications, Inc. and Harbinger Capital Partners Funds,* Memorandum Opinion and Order and Declaratory Ruling, 25 FCC Rcd 3059, 3080 (2010) ("Services once provided exclusively by mobile satellite operators are now also being provided by fixed satellite services ('FSS') operators and certain terrestrial wireless operators.").

[13] SIA Comments at 11-14.

[14] *Id*. at 14-20.

[15] *Id*. at 14-15.

international connectivity to the U.S. now have fiber links.[16] Domestically, point-to-multipoint video delivery services that have been a primary source of demand for satellite services now can increasingly be delivered using fiber.[17] Similarly, a growing number of customers who traditionally relied on satellites for data services have shifted to a combination of satellite and terrestrial-based capacity or have switched over to terrestrial services altogether.[18]

In short, the detailed description of market conditions provided in the SIA Comments clearly justifies a reaffirmation of the Commission's prior determinations that satellite service providers face effective competition. Suggestions to the contrary by a few commenters – CapRock, Spacenet, and Microcom – are unsupported and self-serving and should be rejected.

A. Competition in International Satellite Capacity Is Robust

There is no basis for CapRock's claim that "significant anti-competitive issues exist in the market for international space segment satellite communications services."[19] As a member of SIA, CapRock participated in the SIA Comments and cannot dispute the plain facts as described by SIA. Instead, CapRock attempts to suggest that those facts do not merit a conclusion that there is effective competition in the satellite services markets identified by the Commission.

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[16] *Id.* at 15-16, *citing Comsat Corp. 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, 14106 (1998).

[17] SIA Comments at 16-18.

[18] SIA Comments at 18-20.

[19] CapRock Comments at i.

CapRock's arguments do not withstand scrutiny. For example, CapRock alleges that "[i]ndustry consolidation, unchecked by regulators, has had a major detrimental effect on competition."[20] In fact, however, there have been no major combinations of satellite operators since those approved by the Commission in 2007 and considered in the Commission's examination of satellite services competition in the Second Report.[21] In other words, since the Commission made its determination of effective competition in 2008, there has been no significant industry consolidation that would warrant a different finding today. To the contrary, the SIA Comments indicate increasing competition from a number of new industry entrants, satellite service convergence and terrestrial alternatives.[22]

CapRock's allegations concerning satellite industry consolidation also ignore the underlying economics. Satellite operations are extremely capital-intensive, high-risk, and characterized by significant economies of scale, scope and density.[23] Much of the pre-2008 merger activity can be seen as an attempt by firms to realize these economies.[24] Under these circumstances, the Commission has expressly recognized that mergers can yield important public interest benefits:

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[20] *Id*. at i; *see also id*. at 9.

[21] *See* Second Report, 23 FCC Rcd at 15177-78 (¶ 26). U.S. competition authorities also have had the opportunity to consider the most significant satellite industry mergers and have not raised any objections.

[22] SIA Comments at 8-9.

[23] *See* Second Report, 23 FCC Rcd at 15182-85 (¶¶ 43-51).

[24] *Id.* at 15184-85 (¶ 51) ("The discussion of plant-level and firm-level economies in the contemporary communications satellite industry shows the benefits of large traffic volumes and expansion of firm size for coordinating more complex transponder applications on a global scale. The formation of joint ventures and partnerships together with a number of mergers of satellite networks are consistent with industry re-organization focused on achieving economies of density, scale, and scope.").

> the merger of competitors may result in the creation of a stronger competitor with greater economies of scale in production, improved access to capital for investing in research and development, product and service improvements, and the implementation of competitive strategies focused on innovation. Such benefits of the merger may lead to more intense competition in price, quality, and innovation notwithstanding the loss of an independent but weaker competitor in the relevant product and geographic markets.[25]

CapRock's suggestion that terrestrial services do not compete with satellite offerings is similarly misguided. CapRock argues that terrestrial services are not an option on "thin routes" served by CapRock where there is a lack of available fiber infrastructure.[26] CapRock's claim cannot be squared with the Commission's past findings that terrestrial facilities compete with satellite offerings.[27] Nor can it be squared with SIA's showing that the number of "thin routes" where terrestrial capacity is unavailable has dropped precipitously in just over a decade, and will continue to decline as terrestrial systems expand.[28]

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[25] *Id*. at 15177 (¶ 25).

[26] CapRock Comments at 7-8.

[27] *See, e.g.*, Second Report, 23 FCC Rcd at 15185 (¶ 54) ("the substitution of fiber optic transmission facilities, both terrestrial and undersea cables, for communications satellite services may reduce market demand as new fiber optic facilities are built and brought into service").

It is unclear whether CapRock is trying to suggest that service to "areas or regions with little pre-existing telecommunications infrastructure" (CapRock Comments at 8) represents a standalone market segment. If so, CapRock has presented no support for its theory, which conflicts with Commission precedent holding that terrestrial facilities directly compete with satellite services. *See, e.g.*, Second Report, 23 FCC Rcd at 15174-77 (¶¶ 17-24) (identifying terrestrial service providers as market participants for purposes of the Commission's analysis of domestic and international markets).

[28] SIA Comments at 15-16.

CapRock also alleges that the major satellite operators are not investing in additional capacity and as a result, the available supply is constrained.[29] This is simply not true. Indeed, CapRock's own data show that between them, just two satellite operators – Intelsat and SES – have plans to launch six expansion satellites and fourteen replacement satellites by 2014.[30] SIA identifies a number of other operators that are in the process of adding to their fleets as well.[31] Given this substantial growth in capacity, there is simply no evidence to support CapRock's assertion that the supply of space segment is "increasingly constrained."[32]

CapRock claims that new satellite launches overstate available capacity because the majority of launches are for replacement spacecraft.[33] In fact, however, even replacement launches often lead to net gains in available capacity because the new spacecraft has a larger payload and/or the satellite being replaced is not ready to be retired. For example, when SES WORLD SKIES brought NSS-12 into operation as a replacement satellite at 57° E.L., it was able to redeploy NSS-5 to 20° W.L.[34] The result was a net increase of *70 transponders*: 39 additional transponders at 57° E.L. and another 31 transponders at 20° W.L.[35] Due to this increase in capacity, SES WORLD SKIES publicly reported that its fleet-wide transponder utilization rates

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[29] CapRock Comments at 10-12.

[30] *Id*. at 15, Figure 3.

[31] SIA Comments at 3-8 (describing expansion plans of Telesat, Satmex, Arsat, Hughes, and others.

[32] CapRock Comments at 11.

[33] *Id*. at 10-11.

[34] *See* File Nos. SAT-PPL-20091208-00142 & SAT-APL-20100219-00034, Call Sign S2802, grant-stamped June 4, 2010.

[35] *See* SES S.A., SES Continues to Show Recurring Growth in Q1 2010, (Apr. 23, 2010) at 7.

fell from 80.7% in the fourth quarter of 2009 to 75.8% in the first quarter of 2010.[36] The same occurred when Telesat launched Telstar 11N – the overall transponder utilization rate on its international fleet fell from 86% to 75% between the first and second quarters of 2009.[37] Similarly, when SES WORLD SKIES launched SES-1 to replace services being provided at 101° W.L. by AMC-4,[38] that permitted SES WORLD SKIES to redeploy AMC-4 to 67° W.L. and initiate new services there.[39]

Furthermore, contrary to CapRock's suggestion, there remains significant excess space segment capacity. The Commission has noted that data over the past decade "reflect a consistency of on-going excess transponder supply over time across different regions of the globe."[40] Indeed, CapRock's own numbers indicate a continuing state of overcapacity. The 2009 transponder utilization rates cited by CapRock suggest that excess capacity in the industry is 20% or more,[41] which is healthy by any measure. Using CapRock's own metric, that is the equivalent of 33 *entire satellites* of "suitable" unused capacity available *after* worldwide demand

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36 *Id*.

37 *See* Telesat, Presentation to Investors for the Three Month Period Ending March 31, 2009, May 11, 2009, at 3 (reporting 86% utilization of the Telesat international fleet at the end of the first quarter of 2009); Telesat Achieves Strong Growth in Second Quarter & First Half of 2009, Aug. 10, 2009, at 2 (reporting 75% utilization of Telesat's international fleet and noting that "Telestar 11N entered into service during the second quarter, increasing the number of available transponders in the international fleet."), both available at http://www.telesat.com/en/Investor_Relations.

38 *See* File No. SAT-RPL-20100120-00014, Call Sign S2807, grant-stamped Apr. 20, 2010.

39 *See* File Nos. SAT-MOD-20100623-00144; SAT-STA-20100525-00108, Call Sign S2135, granted in part & deferred in part, July 12, 2010; grant-stamped July 28, 2010.

40 Second Report, 23 FCC Rcd at 15186-88 (¶ 57 and Charts 1 & 2).

41 CapRock Comments at 12 Fig. 4 (showing industry fleet fill rate of less than 80%).

has been satisfied.[42] It is unclear what CapRock means when it refers to pursuing "a more rational market for FSS space segment capacity,"[43] but it cannot mean a market with substantially more excess transponder capacity than currently exists.

B. Domestic Markets Are Also Characterized by Effective Competition

The claims of Spacenet and Microcom concerning inadequate competition with respect to domestic satellite capacity must also be rejected as unfounded. As discussed above, the Commission has previously concluded that domestic satellite services are subject to effective competition, and recent developments warrant reaffirmation of that finding.

Spacenet claims that the domestic transponder capacity market has been adversely affected by consolidation.[44] Like CapRock, Spacenet is an SIA member, and Spacenet does not dispute the facts presented by SIA. Spacenet's discussion of consolidation focuses on transactions that occurred before the Second Report, and were therefore taken into account when the Commission issued its prior determination that there is effective competition for domestic satellite services.[45] As noted previously, there has been no significant industry consolidation since 2008.

Similarly, Spacenet's assertion that Intelsat and SES WORLD SKIES "dominate" the market for domestic transponder capacity[46] is unsupported. Spacenet's discussion of available domestic transponder capacity is fatally flawed because Spacenet fails to consider

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[42] *Id.* at 11.

[43] *Id*. at 14.

[44] Comments of Spacenet Inc., IB Dkt No. 10-99, filed Aug. 23, 2010 ("Spacenet Comments") at 4-5.

[45] *Id*. at 5.

[46] *Id*. at 4.

satellites operated by foreign licensees who have been granted U.S. market access rights.[47] Spacenet dismisses these licensees in a footnote that asserts that "their participation in and ability to serve the domestic U.S. market is far from robust."[48] Spacenet's view is not shared by the Commission, which has made clear that foreign operators on the Permitted Space Station List must be considered in assessing competition for domestic satellite services.[49]

Spacenet also overstates the obstacles to new domestic entry by focusing its analysis only on Ku-band operations and only on a subset of the traditional "domestic arc."[50] For example, in the western portion of the arc there are several slots with no current Ku-band operations that are available for new entry.[51] In addition, there are numerous orbital locations available for U.S. domestic service in the Ka-band, which remains a relatively "green field" for new satellite deployment.[52] Furthermore, although the capital demands of the satellite operation

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[47] *See id*. at 6 (calculating the number of Ku-band orbital positions "assigned by the Commission" that are held by Intelsat or SES WORLD SKIES in the arc between 70° W.L. and 131° W.L.). Spacenet does not explain how it chose the end points of this arc. SES WORLD SKIES notes that the "domestic arc historically has been considered to approximately encompass 60 W.L. to 140 W.L." *See Applications of INTELSAT LLC For Authority to Operate, and to Further Construct, Launch, and Operate C-band and Ku-band Satellites that Form a Global Communications System in Geostationary Orbit*, Memorandum Opinion, Order and Authorization, 15 FCC Rcd 15460, 15488 n.203 (2000).

[48] Spacenet Comments at 4 n.6.

[49] *See, e.g.,* Second Report, 23 FCC Rcd at 15175 (¶ 19) (noting that participants in the market for domestic network services include "all foreign-licensed FSS satellite operators listed on the Permitted list").

[50] *See supra* n.47.

[51] C-band only spacecraft currently operate at each orbital position between 131° W.L. and 139° W.L.

[52] SIA observes that a number of operators, including Hughes, Viasat, and Inmarsat, have launched or announced plans to launch new Ka-band satellites. *See* SIA Comments at 4.

business are significant, as Spacenet suggests,[53] new providers have succeeded in entering the market in recent years.[54]

Competition is also healthy with respect to service to Alaska and Hawaii. Contrary to Microcom's assertions,[55] there is no evidence that Alaska and Hawaii are inadequately served by the satellite industry. The satellite industry has a long history of bringing innovative and cost-effective services to Hawaii and Alaska, and remains committed to that goal. SES WORLD SKIES operates a number of spacecraft with coverage of these states, and shares a joint license for one such satellite (AMC-8) with Alascom (doing business as AT&T Alaska).[56] A second satellite (AMC-7) provides backup capacity for AMC-8. Both satellites today are used to serve the two largest telecommunications service providers in Alaska – AT&T Alaska and GCI. A third satellite (AMC-21) provides Ku-band capacity over Alaska and Hawaii with favorable look angles. Spacecraft of other operators with coverage of Alaska and Hawaii include Intelsat's Galaxy 12, 13, 14, and 18 satellites, the EchoStar 9/Galaxy 23 satellite licensed to Intelsat and EchoStar, Telesat's Anik F1R, F2 and F3 satellites, the Japanese-licensed Horizons 1 satellite, and GE Satcom's GE-23 satellite. Spacenet was recently awarded a $7.5 million grant from the Rural Utility Service to provide broadband service in Alaska and Hawaii, and will use

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[53] Spacenet Comments at 6.

[54] *See* SIA Comments at 8-9.

[55] Comments of Microcom, IB Dkt No. 10-99, filed Aug. 20, 2010 ("Microcom Comments") at 1. SES WORLD SKIES does not concede that Microcom's market definitions are accurate for purposes of the Commission's analysis.

[56] *See GE American Communications, Inc.*, 15 FCC Rcd 23583 (Sat. Div. 2000) (granting SES WORLD SKIES' predecessor GE Americom and Alascom a joint license for the operation of what is now known as AMC-8/Aurora III).

capacity on EchoStar 9 and Galaxy 18 for the service.[57] Alaska and Hawaii are also increasingly well served by submarine cable capacity.[58]

II. THERE IS NO BASIS FOR ADOPTION OF RADICAL NEW SATELLITE POLICIES

In light of the strong evidence that market forces produce effective competition for satellite services, the Commission must reject requests for fundamental changes in its regulatory policies concerning the satellite industry. In particular, CapRock's demands for a raft of new restrictions are blatantly self-serving and would impair, rather than promote, competition.[59]

CapRock asks the Commission to "immediately" implement a variety of new measures, including a moratorium on new satellite industry consolidation, prohibitions on resale and bundling of satellite capacity by satellite operators, and new requirements regarding pricing decisions by satellite operators that have a retail sales arm.[60] CapRock claims that these policies will promote "a more rational market for FSS space segment capacity,"[61] but they will do

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[57] *See* Warren, *Hughes Wins Largest Satellite Grant from Broadband Stimulus*, Comm. Daily, Aug. 20, 2010, at 9.

[58] *See, e.g.*, Alaska Communications Systems, ACS Launches Commercial Traffic on AKORN, Brings Competition and Route Diversity to Alaska, Apr. 7, 2009, (the launch of commercial traffic on the Alaska-Oregon Network submarine cable, "AKORN," more than tripled Alaska's existing interstate bandwidth capacity) available at http://investors.alsk.com/releasedetail.cfm?ReleaseID=375843; SIA Comments at 15 & n.86 (discussing launch of new Honotua cable serving Hawaii).

[59] Microcom also proposes new regulation regarding satellite operators' coverage of Alaska and Hawaii. Microcom Comments at 1. As discussed above, however, market forces have been effective in ensuring robust coverage of these states, and no new requirements are needed.

[60] CapRock Comments at i-ii, 13.

[61] *Id.* at 14.

nothing of the sort. Instead, they will deny satellite service customers a full range of choices and block potentially pro-competitive developments.

As a threshold matter, CapRock simply has not demonstrated a justification for any of the new mandates it seeks. CapRock's assertions of "anti-competitive behaviors" by major satellite operators are just that – assertions. CapRock provides no data to support its claims that current sales and pricing practices of satellite operators are unfair.[62] Nor has CapRock established the kind of market dominance on the part of any satellite operator that would begin to warrant the measures that CapRock wants to impose on all satellite operators.[63]

CapRock's requests must be considered in light of recent history relating to procurement of satellite services for the U.S. Department of Defense ("DOD"). In 2001, the DSTS-G contract was awarded for the Pentagon's commercial satellite bandwidth and end-to-end communications networks.[64] Under DSTS-G, satellite operators cannot sell directly to DOD

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[62] The only specific factual claims contained in the CapRock Comments are reiterations of the allegations against Intelsat that CapRock raised in its comments in the ORBIT Act proceeding regarding the award of a Navy contract. *See id.* at 4-6; *see also* Comments of CapRock Communications, Inc., IB Dkt No. 10-70, filed Apr. 7, 2010 ("CapRock ORBIT Act Comments") at 9-11. As noted below, the U.S. General Accountability Office ("GAO") has rejected CapRock's protest of that contract award.

[63] The Commission has made clear that a finding that a firm is dominant (*i.e.*, possesses individual market power) is a prerequisite to the imposition of remedial measures such as those proposed by CapRock. *See, e.g., Application of Robert M. Franklin (transferor) and Inmarsat plc (transferee), Consolidated Application for Consent to Transfer of Control of Stratos Global Corporation and Its Subsidiaries from an Irrevocable Trust to Inmarsat, plc,* Memorandum Opinion and Order and Declaratory Ruling, DA 09-117, 24 FCC Rcd 449, 470-71 (¶ 50) (Int'l Bur. 2009), application for review pending.

[64] Turner Brinton, *Competition Under Way for U.S. Satcom Services Contracts*, Space News, July 9, 2010 ("Brinton"), available at http://www.spacenews.com/civil/100706-competition-satcom-services-contracts.html. DSTS-G is an acronym for Defense Information Systems Network Satellite Transmission Services-Global. *See* Richard Kusiolek, *Government Contract Vehicles: Life Line or Fault Line*, Via Satellite April 2009 Military Satcom Supplement at M6, ("Kusiolek") available at: http://www.viasatellite-digital.com/viasatellite/milsupp200904.

– instead, three integrators were awarded exclusive rights to compete for contracts.[65] This framework established a middleman structure for satellite services, even for sales of bare transponder capacity to DOD in which the intermediary played no meaningful role.[66] This arrangement was created as a set-aside in favor of small, minority businesses, but each of the original DSTS-G providers has since grown beyond the limits for small businesses or been acquired by larger companies.[67]

Under this procurement structure, CapRock and the other DSTS-G contractors have enjoyed a decade of protection from full competitive forces because satellite operators were not permitted to sell directly to DOD under DSTS-G. However, that era is coming to an end. The DSTS-G contract is scheduled to expire in 2011 and is being replaced by the Future COMSATCOM Services Acquisition program ("FCSA").[68] The measures CapRock now wants the Commission to adopt are inconsistent with the FCSA framework and are an attempt to restore at least some of the protection CapRock previously enjoyed by artificially tying the hands

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[65] Shane Harris, *Satellite Wars*, Gov't Executive, March 1, 2004 ("Harris"), available at http://www.govexec.com/features/0304/0304s4.htm; *see also* CapRock ORBIT Act Comments at 8-9 (DSTS-G contract was awarded to three prime contractors, CapRock, DRS, and Artel; "no satellite fleet operator has had direct access to sell to the DoD under this contract vehicle").

[66] *See* Turner Brinton, *Pentagon Leases Additional Eutelsat Ku-band Capacity*, Space News, May 2, 2010, available at http://www.spacenews.com/military/100602-pentagon-leases-more-eutelsat-capacity.html (describing a sale of Eutelsat capacity under DSTS-G and noting that although Eutelsat was determined to be the only satellite operator to have the necessary capacity available, the contract was not awarded directly to Eutelsat but instead to one of the three DSTS-G integrators).

[67] Brinton; *see also* Harris. The three original integrators were Artel, Arrowhead, and Spacelink. Arrowhead was acquired by CapRock, which in turn was acquired by Harris Corporation, and Spacelink International is now DRS Technologies, a subsidiary of Finmeccanica.

[68] *See Come Together: DISA, GSA Streamline $5B Commercial SATCOM Procurement*, Defense Industry Daily, Feb. 21, 2010, available at http://www.defenseindustrydaily.com/Come-Together-GSA-DISA-Streamline-5B-Commercial-SATCOM-Procurement-06193/.

of satellite operators and impairing their ability to compete effectively with CapRock and other system integrators.

For example, CapRock's proposed ban on the resale by a satellite operator of another operator's capacity would ensure that no single satellite operator (or its affiliates) would be able to easily assemble all of the international capacity that might be required by the U.S. government for a particular network, service or application. The U.S. government has frequent global missions, and in order to support those end-to-end requirements, service providers must generally work with multiple satellite operators, as no single operator will necessarily have capacity available in every region in which the government requires connectivity. The resale prohibition that CapRock proposes would thus impair the ability of satellite operators and their affiliates to offer a complete solution to the U.S. government in competition with CapRock and other system integrators not affiliated with satellite operators. As a result, it would thwart a key objective of the new FCSA framework, which is to ensure "full and open competition."[69] By restricting satellite operators, the CapRock proposal would confer an uncompetitive advantage on a select group of bidders, in contravention of the intent and spirit of the FCSA process.

Similarly, CapRock's proposed moratorium on consolidation is at odds with Commission precedent, competition law, and common sense. The Commission's well-established practice is to consider any proposed merger of communications service providers on its own merits, weighing the efficiencies produced by the transaction against any potential competitive risks.[70] As discussed above, the Commission has expressly recognized that satellite

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[69] *See* GSA/DISA, Future COMSATCOM Services Acquisition, Acquisition Strategy Announcement, Aug. 6, 2009 at 21, available at http://www.gsa.gov/graphics/fas/FCSAJointDISAGSAInformationBriefforAugust6FINAL.ppt.

[70] *See, e.g., Constellation, LLC, Carlyle PanamSat I, LLC, Carlyle PanamSat II, LLC, PEP PAS, LLC, and PEOP PAS, LLC, Transferors, and Intelsat Holdings, Ltd., Transferee*

mergers can increase competition by allowing smaller competitors to join forces and take advantage of size-based economies.[71] The Commission's understanding reflects well-established principles of antitrust law.[72] CapRock's proposal would thwart such efficiency-enhancing mergers.

There is simply no justification for the Commission to embark on this course. As discussed above, CapRock's complaints regarding the state of competition with respect to international transponder capacity are unfounded. CapRock also repeats here assertions of anti-competitive behavior with respect to the bidding of a specific Navy contract that was won by Intelsat General.[73] SES WORLD SKIES notes that the challenge to that contract by CapRock and others has been rejected by the U.S. General Accountability Office.[74]

In sum, CapRock's proposals are based on faulty premises and would stymie, not enhance, competition. As a result, the Commission should summarily reject them.

Consolidated Application for Authority to Transfer Control of PanAmSat Licensee Corp. and PanAmSat H-2 Licensee Corp., 21 FCC Rcd 7368, 7378 (¶ 17) (2006).

[71] Second Report, 23 FCC Rcd at 15177 (¶ 25).

[72] *See, e.g., Horizontal Merger Guidelines of the U.S. Department of Justice and the Federal Trade Commission* (Aug. 9, 2010) at Section 10 ("[A] primary benefit of mergers to the economy is their potential to generate significant efficiencies and thus enhance the merged firm's ability and incentive to compete, which may result in lower prices, improved quality, enhanced service, or new products.")

[73] CapRock Comments at 4-6; *see also* CapRock ORBIT Act Comments at 8-11.

[74] *See* Decision of the GAO in the Matter of CapRock Government Solutions, Inc.; ARTEL, Inc; & Segovia, Inc., File Nos. B-402490; B-402490.2; B-402490.3; B-402490.4; & B-402490.5, May 11, 2010, available at http://www.gao.gov/decisions/bidpro/402490.pdf.

CONCLUSION

For the foregoing reasons, the Commission should determine that U.S. international and domestic satellite services are subject to effective competition and reject CapRock's request for the adoption of new industry regulations.

Respectfully submitted,

SES WORLD SKIES

By: *<u>/s/ Karis A. Hastings</u>*

Karis A. Hastings
Hogan Lovells US LLP
555 Thirteenth Street, N.W.
Washington, D.C. 20004
(202) 637-5600

Joslyn Read
Daniel C.H. Mah
SES WORLD SKIES
1129 20th Street, NW, Suite 1000
Washington, DC 20036

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