Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Issues Related to Allegations of Warehousing and Vertical Foreclosure in the Satellite Space Segment	)))	IB Docket 13-147

ORDER

Adopted: April 14, 2014 **Released:** April 15, 2014

By the Commission:

I. INTRODUCTION

1. In June 2013, the Commission issued a *Notice of Inquiry* exploring allegations that certain fixed-satellite service (FSS) operators are: (1) "warehousing" satellite orbital locations and frequency assignments; and (2) foreclosing competitors from purchasing capacity on their satellites (vertical foreclosure).[1] Based on the record, we close this inquiry.

II. BACKGROUND

2. The Commission opened this docket as a vehicle for building a record that would enable us to evaluate claims of anticompetitive behavior raised in other Commission proceedings.[2] These claims were initially raised in the context of the *Eleventh Orbit Act Report*, which is the Commission's annual report to Congress on the privatization of INTELSAT and Inmarsat, and the impact privatization has had on the domestic and global satellite markets. In response to the public notice issued in preparation for the *Eleventh Orbit Act Report*, several firms known as "integrators"[3] alleged that, following recent consolidation and vertical integration by FSS providers, they were being foreclosed from securing satellite bandwidth capacity. The integrators alleged that without sufficient bandwidth capacity they were less able to compete against FSS providers, resulting in harm to government and corporate customers.[4]

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[1] *Allegations of Warehousing and Vertical Foreclosure in the Satellite Space Segment*, *Notice of Inquiry*, IB Docket No. 13-147, 28 FCC Rcd 8571 (2013) (*Notice of Inquiry*).

[2] *FCC Report to Congress as Required by the ORBIT Act: Eleventh Report*, 25 FCC Rcd 7834 (2010) (*Eleventh Orbit Act Report*); *Third Report and Analysis of Competitive Market Conditions with Respect to Domestic and International Satellite Communications Services, Report and Analysis of Competitive Market Conditions with Respect to Domestic and International Satellite Communications Services*, *Third Report*, IB Docket Nos. 09-16 and 10-99, 26 FCC Rcd 17284 (2011) (*Third Competition Report*).

[3] The integrators are satellite service providers who (1) purchase satellite capacity from satellite operators; (2) enhance the use of such capacity for particular purposes; and (3) resell the enhanced product to corporate or government customers. Integrators often compete with their own satellite operator to sell to the same customer; in this sense, integrators are analogous to resellers of terrestrial telecommunications services.

[4] *See, e.g.*, Comments of ARTEL, Inc., in *Eleventh Orbit Act Report* (filed Apr. 7, 2010) at 5; and Comments of CapRock Communications, Inc., in *Eleventh Orbit Act Report* (filed Apr. 7, 2010) at 10. In the *NOI* at fn. 8, subsequent to raising these allegations, both companies have undergone changes in ownership. CapRock was acquired by Harris, http://www.sec.gov/Archives/edgar/data/202058/000095012310073462/g24273e8vk.htm, and

(continued….)

Integrators also alleged that FSS providers were warehousing satellite orbital locations, to the detriment of customers.[5]

3. As noted in the *Notice of Inquiry,* the *Eleventh Orbit Act Report* was not the appropriate forum in which to address these allegations. Instead, the Commission's annual report to Congress on satellite competition provided a natural vehicle for gathering information that could bear on such allegations. In this regard, the International Bureau, in preparation for the *Third Competition Report,* issued a public notice soliciting comment on a variety of issues, including the claims related to vertical foreclosure and warehousing.[6] In response to the public notice, one of the integrators, CapRock, repeated and expanded upon the comments it made in the context of the *Eleventh Orbit Act Report*.[7]

4. In the *Third Competition Report*, the Commission concluded that there was not enough information in the record to evaluate allegations of vertical foreclosure and warehousing.[8] Consequently, the Commission stated that it would open a separate proceeding to generate a more detailed record. The separate proceeding was the *Notice of Inquiry* in which we asked targeted questions designed to elicit such a record on key issues related to vertical foreclosure and warehousing.[9]

III. DISCUSSION

5. Four comments were filed in response to the *Notice of Inquiry.*[10] Two FSS satellite operators, Intelsat License LLC (Intelsat) and SES S.A. (SES), responded to the questions related to vertical foreclosure and warehousing.[11] Two other operators, EchoStar Satellite Operating Corporation and its wholly-owned subsidiary Hughes Network Services, LLC (EchoStar), filed joint comments responding to the questions related to warehousing.[12] The Satellite Industry Association (SIA) also filed comments addressing the warehousing questions.[13] The record we received in response to the questions raised in the *Notice of Inquiry* about vertical foreclosure was sparse and came only from two commonly situated stakeholders, satellite operators Intelsat and SES. Intelsat and SES state that further action by the

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ARTEL received a major investment from TP Growth, http://www.reuters.com/article/2011/06/02/idUS111266+02-Jun-2011+BW20110602.

[5] Comments of CapRock Communications, Inc., in *Eleventh Orbit Act Report* at 12-15.

[6] *International Bureau Invites Comment for Fourth Annual Report to Congress on Status of Competition in the Satellite Services Industry,* Public Notice, 25 FCC Rcd 10049 (Int'l. Bur. 2010).

[7] *See* Comments of CapRock Communications, Inc., in *Third Competition Report* (filed July 22, 2010).

[8] *Third Competition Report*, 26 FCC Rcd at 17350,17354, ¶¶169, 183. *See also Notice of Inquiry*, 28 FCC Rcd at 8752, ¶1.

[9] *See Notice of Inquiry*, 28 FCC Rcd at 8582-84, ¶¶ 29-36.

[10] DIRECTV, LLC, did not file comments in response to the *Notice of Inquiry*. Several months after the comment period closed, however, DIRECTV submitted a copy of a petition it filed in an adjudicatory proceeding involving SES Americom, Inc., into the record in this proceeding. DIRECTV's petition requests that the Commission deny an application related to the SES-3 satellite because DIRECTV believes the application is an attempt by SES Americom to warehouse spectrum. *See* IBFS File Nos. SAT-RPL-20121228-00227 and SAT-AMD-2013113-00132. DIRECTV's petition did not address the questions raised in the *Notice of Inquiry,* that is, whether the Commission should adopt new rules to address warehousing and, if so, what those rules should be. Consequently, the *Notice of Inquiry* is not the appropriate forum in which to address DIRECTV's petition. Rather, it is appropriately addressed in the application proceeding.

[11] Comments of Intelsat License LLC (Comments of Intelsat) (filed Aug. 19, 2013), at 6-18, 21-26; Comments of SES S.A. (Comments of SES) (filed Aug. 19, 2013), at 13-22, 24-26.

[12] Comments of EchoStar Satellite Operating Corporation and Hughes Network Services, LLC (Comments of EchoStar) (filed Aug. 19, 2013), at 7-17.

[13] Comments of Satellite Industry Association (Comments of SIA) (filed Aug. 19, 2013), at 1-7.

Commission regarding vertical foreclosure is unwarranted. Notably, no integrator or other potentially affected party filed comments on this issue.

6. Regarding the questions in the *Notice of Inquiry* related to warehousing, Intelsat, SES, EchoStar, and SIA generally agree that the warehousing questions assume a non-competitive industry and that codifying rules in this area would greatly restrict operator flexibility.[14] All four commenters recommend that the Commission terminate the warehousing portion of this proceeding.[15]

7. For the following reasons we terminate this proceeding. With respect to vertical foreclosure, we close the proceeding given the limits of the record and information on this issue. With respect to the warehousing issues, we conclude that the record does not provide a basis for taking further action at this time.

IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED that this *Notice of Inquiry* is terminated.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

[14] *See* Comments of Intelsat 6-21; Comments of SES 6-23; Comments of EchoStar at 7; and Comments of SIA at 1-3.

[15] *See* Comments of Intelsat at 30; Comments of SES at 27; Comments of EchoStar at 16-17; and Comments of SIA at 7.