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**Agência Nacional de Telecomunicações (ANATEL)
Superintendência de Serviços Privados
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Ref: Consulta Pública N° 456, de 28 de Maio de 2003, Proposta de Regulamento de Cobrança de Preço Público pelo Direito de Exploração de Serviços de Telecomunicações e Direito de Exploração de Satélite

The European Satellite Operators Association (“ESOA”), the Global VSAT Forum (“GVF”) and the Satellite Industry Association (“SIA”), and the hereby submit these comments in response to Consulta Pública N° 456.

As way of background, ESOA, GVF and SIA are trade associations representing the leading international satellite service providers, manufacturers, launch services companies, and VSAT ground equipment suppliers throughout the world.¹ The associations’ member companies provide a broad range of products and services in the commercial satellite industry, many of whom are either already active in the Brazilian market or consider it an important market for future business in the Americas.

The ESOA, GVF and SIA believe that the proposed regulatory framework in Public Consultation N° 456 will negatively affect the provision of satellite services in Brazil, by requiring the payment of fees that are not proportionate to costs associated with ANATEL’s regulatory or administrative functions. Furthermore, ESOA, GVF and SIA believe that the

¹ESOA’s members include EurasiaSat SAM, Europe*Star, Eutelsat S.A., Hispasat, Inmarsat Ventures PLC, New Skies Satellites N.V., Nordic Satellite AB, SES Global, Telenor and Telespazio. For more information on ESOA, please visit the association’s website at www.esoa.net.

GVF’s members include more than 160 members from 40 different countries in every major region of the world and from every sector of the telecommunications industry. For more information on GVF, please visit the association’s web site at www.gvf.org.

SIA’s members include The Boeing Company; Globalstar, L.P.; Hughes Network Systems; ICO Global Telecommunications; Intelsat; Lockheed Martin Corp.; Loral Space & Communications Ltd.; Mobile Satellite Ventures; Northrop Grumman Corporation; PanAmSat Corporation; and SES Americom, Inc. SIA’s associate members include Inmarsat; New Skies Satellites; and Verestar. The association’s affiliated members include The California Space Authority; Compass Rose International; and Futron Corporation. For more information on SIA, please visit the association’s web site at www.sia.org.

proposed regulatory framework runs counter to public interest policies aimed at increasing satellite services through pro-competitive, market-driven efforts.

The proposed regulatory framework imposes burdensome and unnecessary barriers on satellite operators, to the detriment of Brazilian users. Adoption by ANATEL of these cumbersome and costly measures would result in a significant financial burden on operators of foreign licensed satellites; affect their ability to develop new markets and roll-out new services, hinder the ability to provide needed infrastructure in markets that lack access; and prevent users throughout Brazil from realizing the benefits of satellite services. The proposed regulatory framework will also seriously affect Brazilian telecommunication service providers as well as foreign companies licensed in Brazil, who have established long-term business around current space segment prices. Ultimately, if approved, this regulation will require a re-calculation of all subscriber and customer charges, potentially jeopardizing the continuation of current contracts. The end result would be an increase in the cost of doing business in Brazil and, at a minimum, would lead to increases in the rates charged to satellite users in the country.

There is no doubt that many other countries in the Americas and around the world view Brazil as a leader in satellite communications. Therefore, ESOA, GVF and SIA believe that if ANATEL were to establish a fee as described in the Public Consultation documents, other Administrations could follow suit. This would have devastating results for international satellite operators, including Brazilian satellite operators, who would face significant financial burdens in other national markets. The resulting barriers would negatively affect the expansion of all satellite systems, and could very well prevent entirely the roll out of new satellite services throughout the Americas.

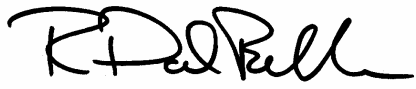
The ESOA, GVF and SIA members respectfully urge ANATEL to reconsider its proposal to establish a fee for the Right to Exploit a Satellite in Brazil, in accordance with the comments attached to this letter.

Respectfully submitted,



Fulvio Sansone
Secretary General
European Satellite Operators Association

David Harshorn/s/
David Hartshorn
Secretary General
Global VSAT Forum

A handwritten signature in black ink, appearing to read "Richard DalBello". The signature is fluid and cursive, with the first name "Richard" and last name "DalBello" clearly distinguishable.

Richard DalBello
President
Satellite Industry Association

Article 10.

Proposed Modification:

“Article 10. The price to be paid as a public price for the Right to Exploit a Foreign Satellite is calculated based on the administrative cost of issuing the required authorization and is set forth in Annex I.”

Justification for Modification:

For the following reasons, the ESOA, GVF and SIA strongly object to the use of the proposed formula to determine a public price for the Right to Exploit a Foreign Satellite in Brazil:

- 1. Minimum Bid Reference Factor.** This administrative fee should not be linked to the minimum bid amount (“Pmin” in the proposed formula) paid for the use of a Brazilian orbital position and its associated frequencies. ANATEL’s decision to auction FSS orbital positions should not affect the ability of other operators to provide satellite capacity in Brazil.² Use of the minimum bid amount as a reference factor in the calculation of the fee to be paid by operators of foreign licensed satellites will have undesired public policy effects, by reducing rather than enhancing, competition in Brazil through competitive pricing. ANATEL should ensure that any administrative fee the agency charges for the grant of an authorization to an operator of a foreign satellite does not hamper the development of a competitive satellite industry. The proposed system creates unprecedented regulatory uncertainty in the satellite industry, since it would be impossible for operators to know beforehand how much it will cost them to enter the Brazilian market.

There is no direct relationship between the auction reference value and the right of a foreign licensed satellite to provide services in Brazil. Unlike an auction winner who acquires the right to operate the selected Brazilian orbital location and its associated frequencies, the operator of a foreign licensed satellite does not acquire the right to a resource from the Brazilian administration when seeking an authorization to provide its satellite capacity in the country. Rather, the foreign operator obtains its respective license or authorization from its own administration to construct, launch and operate the space station at a specified orbital location.

In addition, use of the proposed system can affect the provision of global satellite services. Other nations can easily follow the lead of Brazil in this area and impose auction related charges to satellite operators wanting to serve their market.

² It is important to note that, as a general principle, the ESOA, GVF and SIA oppose the use of auctions by administrations as a spectrum management tool. Auctions increase regulatory uncertainty, delay the rollout of new services by inserting additional costs and complexity into the business planning process of satellite operators, and encourage other administrations to hold “sequential” auctions.

The unintended consequence is that Brazilian operators may be required to pay unnecessary and artificial charges on a country-by-country basis. ESOA, GVF and SIA believe that the compounding effect of such an approach would be crippling for the satellite industry as a whole, both for Brazilian satellite operators and for operators of foreign licensed satellites.

The proper way to establish a licensing fee for the authorization of foreign satellite operators is to determine the administrative costs that ANATEL incurs in order to issue such authorization and regulate the use of foreign satellites in the Brazilian market. ANATEL should specify this charge in Annex I of the regulation, as it has for the other types of Rights.

2. Inequitable Fees. Use of the proposed formula could result in different operators being charged dissimilar fees. The formula fails to take into account the dynamic and versatile nature of satellite communications. For example, a satellite operator that has a satellite with a greater number of transponders due to frequency reuse will be penalized by having to pay a higher fee in order to have all of the transponders authorized in Brazil. Because the majority of the coverage beams on international satellites are not country-specific, it is impossible for the operator to determine beforehand which specific transponders will be sold in Brazil and the number of MHz on each transponder.

For example, a satellite may be authorized to offer capacity in Brazil but, due to a lack of customer need, none or merely a tiny fraction of the transponder capacity might be used in Brazil during the life of the satellite. For business planning purposes, however, it is important that satellites are licensed in every country included in its coverage area so that when a commercial opportunity arises, an operator is able to quickly respond to a customer's need. Such a situation is common among the associations' members that have satellites authorized to provide capacity in Brazil. It is important to note that the current system used by ANATEL under Resolution No. 68 to assess frequency fees also fails to take into account this matter.

3. Satellite Lifetime Fees. Use of the proposed formula results in punitive charges to satellite operators. The system requires the payment to be made upon the issuance of the authorization by ANATEL. Because the proposed formula takes into account the use of frequencies for the provision of satellite services, payments should not be required in advance, for the lifetime of the satellite. It is important that satellite operators be allowed to maintain the flexibility to make any necessary changes in their satellite fleets, without the need to incur additional licensing fees. For example, satellite operators often move satellites among different orbital slots. A satellite operator should not be expected to pay a fee associated with the life of a satellite when the reality is that the satellite might only be located temporarily at a particular orbital location and capacity might be offered in Brazil on a short-term basis. In addition, in the event of a technical problem affecting the life, service area or capacity availability of a satellite, a one-

time fee would be unfair to the satellite operator if such a fee is assessed based on the health status of the satellite at the time of authorization by ANATEL.

I. ESOA, GVF and SIA urge ANATEL to consider a licensing regime that includes a fee based solely on administrative cost recovery. Such a fee is equitable for all satellite operators, and would not disrupt the provision of satellite services in Brazil.

II. Article 13.

III. Proposed Modification:

“Article 13. The amount to be paid corresponding to the public price for the right to exploit shall be paid only once, in accordance with Annex I, when the authorization to exploit telecommunications services or the Right to Exploit a Satellite is issued by the Agency.”

Justification:

The administrative charge associated with the issuance of an authorization to provide services via a foreign licensed satellite should be paid upon issuance of the corresponding authorization by ANATEL. ESOA, GVF and SIA believe that the proper way to establish a licensing fee for the authorization of foreign satellite operators is to determine the administrative costs that ANATEL incurs in order to issue such authorization and to regulate the use of foreign satellites in the Brazilian market. Accordingly, ANATEL should determine this charge and specify it in Annex I of the regulation.

Article 18.

Proposed Modification:

“Article 18. In accordance with the provisions of these Regulations, the Agency must notify the following entities for the payment of the public price:

I. – the companies authorized to provide telecommunications services, whose authorization acts are granted after the date of publication of these Regulations in the Official Gazette;

- II. – the companies which request the Rights to Exploit a Foreign Satellite after the date of publication of these Regulations in the Official Gazette;
- III. – the companies which have acquired authorizations, concessions or permits to provide telecommunications services, through a transfer made after the date of publication of these Regulations in the Official Gazette;
- IV. – the companies that acquire the Right to Exploit a Satellite through a transfer after the date of publication of these Regulations in the Official Gazette.”

Justification:

ESOA, GVF and SIA strongly believe that any fee established through these proposed Regulations should become applicable only for satellite authorizations that are requested after the Regulations are completed and approved. In accordance with the principles of the International Telecommunications Union (“ITU”), such fees should not be retroactive, but rather should apply to authorizations granted after the date the new framework comes into force.

It is important to note that many foreign licensed satellite operators have already paid ANATEL for the use of the associated radio frequencies, in accordance with invoices issued by ANATEL under Resolution No. 68. Although current licensees in Brazil hold authorizations that state that they will be required to pay a fee for the right to Exploit a Foreign Satellite -- to be established in specific regulations in accordance with Article 14 of Resolution 220 -- the ESOA, GVF and SIA believe it is not reasonable to assert that foreign operators could have foreseen a possible link to the minimum bid price or an open-ended fee. Therefore the ESOA, GVF and SIA believe it would be unfair to require foreign satellite operators to pay a retroactive fee, particularly since such fees could not have been reasonably foreseen or incorporated into the company’s business plan.

In fact, non-retroactivity is a general principle at the ITU. Should ANATEL decide, regardless, that the fee will be applied in a retroactive manner, the agency should allow foreign satellite operators the opportunity to surrender or modify their particular authorizations without requiring any payment or penalty if the operator decides not to continue providing services in the country.