



COMMENTS OF THE SATELLITE INDUSTRY ASSOCIATION

The Satellite Industry Association (“SIA”), on behalf of its Member Companies,¹ hereby files its Comments concerning foreign trade barriers, in response to the U.S. Trade Representative’s Request for Comments Concerning Compliance With Telecommunications Trade Agreements.² SIA is a U.S.-based trade association providing worldwide representation of the leading satellite operators, service providers, manufacturers, launch services providers, and ground equipment suppliers. Since its creation more than fifteen years ago, SIA has become the unified voice of the U.S. satellite industry on policy, regulatory, and legislative issues affecting the satellite business. Our comments are as follows:

CHINA

National treatment. China is a restrictive market for foreign satellite operators. Satellite operators that are Chinese-owned receive preferential treatment over foreign satellite operators. Unlike domestic Chinese satellite operators, foreign satellite operators are prohibited from leasing transponder capacity directly to end-users in the country. Instead, foreign satellite operators are required to obtain government approval or enter into a contract with a “qualified domestic entity” in order to provide satellite capacity or services within China.

¹ SIA Executive Members include: Artel, Inc.; The Boeing Company; The DIRECTV Group; EchoStar Satellite Services LLC; Harris CapRock Communications; Hughes Network Systems, LLC; Intelsat, S.A.; Iridium Communications Inc.; Kratos Defense & Security Solutions; LightSquared; Lockheed Martin Corporation.; Northrop Grumman Corporation; Rockwell Collins Government Systems; SES S.A.; and Space Systems/Loral. SIA Associate Members include: AIS Engineering, Inc.; ATK Inc.; Cisco; Cobham SATCOM Land Systems; Comtech EF Data Corp.; DRS Technologies, Inc.; Encompass Government Solutions; Eutelsat, Inc.; GE Satellite; Globecom Systems, Inc.; Glowlink Communications Technology, Inc.; iDirect Government Technologies; Inmarsat, Inc.; Marshall Communications Corporation.; MTN Government Services; NewSat America, Inc.; Orbital Sciences Corporation; Panasonic Avionics Corporation; Spacecom, Ltd.; Spacenet Inc.; TeleCommunication Systems, Inc.; Telesat Canada; TrustComm, Inc.; Ultisat, Inc.; ViaSat, Inc., and XTAR, LLC. Additional information about SIA can be found at <http://www.sia.org>.

² See Request for Comments Concerning Compliance With Telecommunications Trade Agreements, 77 Federal Register 70527 (2012).

There is currently only one authorized domestic satellite service provider in China – China Satellite Communications Co. Ltd. (“China Satcom”), a fully-owned subsidiary of the China Aerospace Science and Technology Corporation (“CASC”). The organization that is now China Satcom was founded in 2001 as the China Satellite Communications Corporation, and was the successor organization to the China Telecommunications Broadcast Satellite Corporation.

In late 2006, the State-owned Assets Supervision and Administration Commission of the State Council (“SASAC”) approved a broader restructuring of the national telecommunication industry in China. As a result, China Direct Broadcast Satellite Company (“China DBSat”) merged into a single operation all satellite-related assets, businesses and professionals of the former domestic Chinese satellite companies, namely China Satellite Communications Corporation, Sino Satellite Communications Company Ltd., and China Orient Telecommunications Satellite Company Ltd. China’s satellite industry was again restructured in April 2009, with a vertical and horizontal consolidation of all satellite services into China Satcom, the sole operator of satellites and sole provider of related services in China.

In addition to China Satcom as the sole domestic satellite service provider, Asia Satellite Telecommunications Company Limited (“AsiaSat”) and APT Satellite Company Limited (“APT”) are the only international satellite companies allowed to provide satellite services directly to end-users in China. These two companies are based in Hong Kong, but are partially owned by Chinese government entities.³

Monopoly. A true “open skies” policy should be adopted for the provision of satellite services in China, without explicit preference for Chinese or Hong Kong satellite operators. Local users in China should be allowed to contract directly with any satellite operator for any satellite capacity that has the ability to serve China, and not be constrained by regulatory policies that establish a “preference” for a domestic operator or service provider, or that constrain the use of the satellite capacity in the country, as is the case today.

Transparency. There is a lack of transparency with regard to satellite regulations in China. While revisions to the Telecommunications Regulations of the People’s Republic of China, published by the State Council on September 25, 2000, are currently under

³ AsiaSat is a wholly-owned subsidiary of Asia Satellite Telecommunications Holdings Limited, a company listed on the Hong Kong Stock Exchange, whose two major shareholders are CITIC Limited (a large Chinese state-owned conglomerate) and General Electric Company. APT is part of APT Satellite Holdings Limited, a company listed in the Hong Stock Exchange which counts as its shareholders China Satcom, China Aerospace Science & Technology Corporation, SingaSat Pte., Ltd., CASIL Satellite Holdings Limited (a wholly-owned subsidiary of China Aerospace International Holdings Limited), and Kwang Hua Development and Investment Ltd. (a Hong Kong corporation jointly owned by the Ruentex Group and China Development Corporation).

consideration, it is unclear how these proposed revisions will apply to satellite communications.

Market access. In August, 2005, the State Council issued a directive which stated that investment in radio and television signal broadcasting and stations, satellites, and backbone networks would be closed to private capital. Further, China also bans foreign companies and organizations from offering educational services via satellite networks.

INDIA

National treatment. India is a restrictive market for foreign satellite operators. While regulations indicate that end users in India can uplink signals from India (using either C- or Ku-band) via Indian as well as foreign satellites, *“proposals envisaging use of Indian satellites will be accorded preferential treatment.”*

The Indian Space Research Organization (“ISRO”), the primary space agency of the Indian government, and Antrix Corporation Limited (“Antrix”), the commercial wing of ISRO, play the role of “middleman” in the provision of satellite services in India. ISRO was established in 1969 to supersede the Indian National Committee for Space Research (“INCOSPAR”), and is under the administrative control of the Department of Space (“DOS”). ISRO operates the Indian National Satellite System (“INSAT”), as well as the Polar Satellite Launch Vehicle (“PSLV”) and the Geosynchronous Satellite Launch Vehicle (“GSLV”), which are used for putting satellites into polar orbits and geostationary orbits, respectively.⁴

Antrix, a wholly owned Government of India Company under the administrative control of DOS, was incorporated in 1992 as a private limited company. Antrix serves as the marketing arm of ISRO for the promotion and commercial exploitation of space products, technical consultancy services and transfer of technologies developed by ISRO. In addition, Antrix offers transponder lease services.

For C-band VSAT services on a foreign satellite, regulations in India effectively require that VSAT operators route their connectivity through ISRO. Media applications in C-band using a foreign satellite are authorized, but unlike Indian operators, foreign satellite operators must first seek clearance for these offerings, and the end user must obtain a Wireless Operation License from the Ministry of Communications & IT (a “WPC license”).

⁴ In addition, in 2008 ISRO successfully launched its first lunar probe (Chandrayaan-1), and its future plans include manned space missions, further lunar exploration, and interplanetary probes.

The general terms and conditions for uplinking a channel (distribution) and/or for using satellite capacity for contribution/satellite news gathering purposes require a WPC license, in addition to an uplink license (news and non-news). Effectively, the procedure prevents a foreign satellite operator from providing occasional use capacity (C- and/or Ku-band) to end users in India as a minimum of two weeks are required for the end user to obtain a temporary uplink license and another two to three weeks to obtain a WPC license.

For Ku-band services, end users in India are only allowed to uplink through Indian satellites. No foreign satellite operator is allowed to provide any Ku-band capacity to an end user in India unless it does so via ISRO, an entity with which foreign satellite operators are in direct competition.

Satellite services operating in the Ku-band remain banned from broadcasting to cable head ends. There is no technical or logical policy reason for this restriction, given that Ku-band capacity is just as suitable for video distribution as are other frequencies, such as C-band, that are currently approved for this application in India.

Restrictions on the use of foreign satellite capacity for direct-to-home (“DTH”) services. India’s Ministry of Information and Broadcasting (“MIB”) has established guidelines that establish a preference for Indian satellites to provide capacity for delivery of Direct-to-Home subscription television services (“DTH”). While these guidelines do allow the use of foreign satellites if the foreign satellite has completed the international frequency coordination process with the INSAT satellite system, in practice, authorized DTH licensees have not been permitted to contract directly with foreign operators even if the frequency coordination has been completed. Instead, any foreign satellite capacity must be procured through ISRO which, in turn, only permits such procurements if it does not have available capacity on its own system. If ISRO cannot meet the DTH requirement, the foreign satellite operator first must sell its capacity to ISRO, a direct competitor, which then resells it to the consumer, creating a middleman scenario with the following effects: (i) additional costs are created for the consumer through markups by ISRO; (ii) ISRO is able to structure contracts with the goal (sometimes explicitly stated) of moving the service to one of ISRO’s satellites once capacity is available; and (iii) ISRO determines the rate at which the market grows.

De facto monopoly. Indian regulations restrict the provision of satellite services by foreign satellite operators directly to end users in the country.

A true “open skies” policy should be adopted for the provision of satellite services in India, without preferences for the Indian government’s space agency or commercial arm. Local users in India should be allowed to contract directly with any satellite operator for any satellite capacity that has the ability to serve India, and not be

constrained by regulatory policies that establish a “preference” for a domestic operator or service provider, or that constrain the use of the satellite capacity in the country.

Lack of clarity regarding the role of the Department of Space. The Indian Department of Telecommunication’s New Telecom Policy of 1999 stated that users of transponder capacity would be able to access both domestic and foreign satellites, in consultation with the DOS. While it might be necessary for the DOS to ensure that foreign satellites are completing international coordination agreements with the INSAT system, requirements that foreign satellite capacity be procured through ISRO, a direct competitor of foreign satellite operators, have no technical or market basis. The “middleman” role of ISRO results in a competitive advantage for the domestic Indian satellite system.

Market access. The *Guidelines for Uplinking from India* require media content providers that down-link programming from a satellite into the country to establish a registered office in India or designate a local agent. India cites greater oversight over programming content as its rationale for such a requirement, but it could instead control content through its licensed entities such as cable companies or DTH providers. The policy is overly burdensome and effectively requires companies to establish a taxable presence in India.

India limits foreign direct and indirect investment in companies engaged in uplinking to satellites to a maximum of 49 percent, negatively impacting the ability of U.S. companies to invest.

Security concerns. Since December 2009, the Indian Government has instituted a series of policies aimed at securing its telecommunications network infrastructure, without undertaking a systematic, transparent and broad-based stakeholder consultation to ensure that these policy measures are not trade restrictive or deviate from global best practices. As a consequence, India has developed and implemented policies that are inconsistent with global norms and that do not take into account the economic, business and security consequences. India has mandated the transfer of technology from foreign equipment manufacturers to domestic ones, and is contemplating requiring all equipment manufacturers to escrow source code and other sensitive design elements when selling equipment to telecommunications operators in India. In addition, security restrictions on mobile satellite services (“MSS”) operators require the deployment of particular gateway infrastructure within India, despite the fact that more advanced technologies other than locally-established gateways can fully meet security concerns. This requirement should be removed.

Conclusion

SIA is grateful for the opportunity to share these comments with the Office of the U.S. Trade Representative. We would welcome further dialogue with USTR on these matters. Please do not hesitate to contact us if you have any questions about this submission or questions of a more general nature.

Respectfully submitted,

SATELLITE INDUSTRY ASSOCIATION

A handwritten signature in black ink, appearing to read "Patricia Cooper". The signature is written in a cursive, flowing style.

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