



December 15, 2006

Trade Policy Staff Committee
Office of the United States Trade Representative ("USTR")
1724 F Street, N.W.
Washington, D.C. 20508
Attn: Section 1377 Comments

Dear Sir/Madam:

Pursuant to section 1377 of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 3106), the Satellite Industry Association ("SIA") hereby submits the following comments to the USTR.

SIA is a U.S.-based trade association representing the leading satellite manufacturers, fixed satellite operators ("FSS"), mobile satellite operators ("MSS"), satellite service providers, and launch service companies throughout the globe. SIA serves as an advocate for the U.S. commercial satellite industry on regulatory and policy issues common to its members. With its member companies providing a broad range of manufactured products and services, SIA represents the unified voice of the commercial satellite industry.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.

Respectfully submitted,

A handwritten signature in black ink that reads "David Cavossa". The signature is written in a cursive style with a large initial "D" and "C".

David Cavossa
Executive Director
Satellite Industry Association
1730 M Street, N.W. Suite 600
Washington, D.C. 20036

¹ SIA Executive Members include: The Boeing Company; Globalstar, L.P.; Hughes Network Systems, Inc.; ICO Global Communications; Intelsat; Iridium Satellite LLC, Lockheed Martin Corp.; Loral Space & Communications Ltd.; Mobile Satellite Ventures; Northrop Grumman Corporation; PanAmSat Corporation; and SES Americom Inc.. SIA's Associate Members include Eutelsat, Inc.; Inmarsat Ltd.; New Skies Satellites Inc.; Stratos Global Corp.; The DirecTV Group; IOT Systems LLC; Marshall Communications Corp.; and Spacecom Ltd.

I. COUNTRIES WITH WTO ACCESSIONS IN PROGRESS

Algeria	Samoa
Andorra	Saudi Arabia
Azerbaijan	Serbia and Montenegro
Bahamas	Seychelles
Belarus	Sudan
Bhutan	Tajikistan
Bosnia and Herzegovina	Tonga
Cape Verde	Ukraine
Ethiopia	Uzbekistán
Kazakhstan	Vanuatu
Lao People's Democratic Republic	Vietnam
Lebanese Republic	Yemen
Russian Federation	

II. 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.

III. WTO COUNTRIES WHOSE OFFERS NEED TO BE IMPROVED

Bangladesh	Mexico
Brazil	Philippines
China	Russian Federation (accession candidate)
Egypt	Saudi Arabia
India	South Africa
Israel	Thailand
Kazakhstan (accession candidate)	Vietnam (accession candidate)
Korea	Venezuela
Malaysia	

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.
- Monopoly: Chinasat continues to have a monopoly for the provision of satellite services in China.
- 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.
- Duopoly: only two licensed operators can provide satellite services in Egypt; however, the incumbent, NileSat, is still the dominant provider.

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.
- National treatment: national treatment is not afforded to foreign operators in Israel - only use of Bezeq infrastructure and networks is permitted

7. Kazakhstan

- National treatment: Kazakhstan has launched its own national satellite (KazSat 1). The government has signaled –through correspondence with satellite service providers – that it intends to require service providers to move certain services to the KazSat satellite. There should be no preferential or special treatment vis-à-vis any of the other local or global satellite systems.
- Monopoly: Kazakh Telecom's monopoly, scheduled to end in January 2007, should be terminated.
- 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.

8. 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).

9. Malaysia

- National treatment: there is a failure to provide national treatment for foreign operators in Malaysia and preference is given to local operators.

10. 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.

11. 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).

12. 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 not 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.

13. 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.

14. 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.

15. Thailand

- Monopoly: there is a monopoly for international (CAT) and domestic (TOT) services, which results in a failure to provide national treatment for foreign operators and impairs market entry.

16. Vietnam

- National treatment: Vietnam has its own satellite operator (Vinasat) which has not yet launched its first satellite. Once launched, there should be no preferential or special treatment vis-à-vis any of the other local or global satellite systems. Nor should Vinasat enjoy any special privileges in the provision of interim capacity it may lease from existing satellite systems.
- Monopoly: VNPT should not be allowed to serve as an intermediary for the sale of space segment. Operators should be able to provide satellite capacity directly to all licensed entities.
- Transparency: satellite regulations in Vietnam are not transparent.

17. 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.