OPEN SKIES POLICY - MARKET ACCESS PRINCIPLES FOR SATELLITE COMMUNICATIONS

Executive Summary

The need for *Open Skies* approach for satellite services stems from the reach and nature of satellite signals, which illuminate large geographical areas and are blind to national boundaries. Satellite operators draw on this natural benefit of satellite signals to build businesses that are global and support satellite-based businesses and networks creating economic development worldwide.

About ESOA

ESOA is a non-profit membership organisation dedicated to serving and promoting the common interests of satellite operators from Europe, the Middle East, Africa, and the CIS. The Association today represents the interests of satellite operators who deliver information communication services across the globe. Together ESOA Members provide invaluable communications services to the whole world, including live broadcasting, emergency communications, maritime and aero communications, secure services for governments, 24/7 monitoring of industrial processes such as energy plants, weather forecasting and a whole range of other communications services.

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EMEA SATELLITE OPERATORS ASSOCIATION

Introduction

Satellites can reach consumers without the need for a satellite operator to have a physical presence (e.g., through gateway earth stations or network control centers) or the need to establish a commercial presence (e.g. through a branch, subsidiary or a local legal representative) in every country where services are provided. The requirement to set up a physical or commercial presence in every market would incur substantial unnecessary costs and would not be consistent with the least burdensome trade principles of the GATS agreement.

Satellite services tackle the difficulties of other land-based, wired or wireless communications technologies which do not have the same reach. Satellites provide the infrastructure to communicate for those who are, by virtue of their remote physical location, unreachable. This is relevant not only to development policy and goals, but also to communicating in times of disaster, and to facilitating communications for those to whom access to information is denied, for instance for political reasons. Open Skies and other regulatory policies related to that are essential to achieving these objectives.

Benefits of *Open Skies* policy

One of the most fundamental regulatory principles for satellite operators around the world is the *Open Skies* policy. It means that national regulators impose no more burdensome requirements or restrictions on the use of foreign satellite systems than on the use of domestic/national satellite systems. In fact, in the best regulatory regimes, national regulators impose no regulations or requirements on the use of foreign or domestic satellite communications, and instead appropriately focus national regulations on the authorization of telecommunications service providers in country.

Open Skies principle is an effective regulatory approach applied by the majority of countries in the world. Experience in these jurisdictions has shown that this policy increases the choice of services for consumers, lowers end user prices through competition, expands economic growth as essential telecom services and Internet connectivity are deployed throughout the country, enhances advanced service development by creating inter-modal competition to terrestrial services, and stimulates investment in infrastructure.

A competitive domestic market and a healthy environment for innovation generates growth that also influences other communications sectors. As an example, we can see that in Europe, a variety of digital TV platforms exist. Satellite provides a good share of the market competing and complementing terrestrial operators as well as supplying the video feeds for terrestrial operators. In addition, satellites drive the development and deployment of new services, such as UHDTV (4K) in Europe, Internet broadband services in Africa, or mobile TV in Asian countries (e.g. Korea and Japan) and in Europe.

It is also to be emphasized that foreign satellite operators can provide key applications such as tele-education and tele-medicine or initiate novel local projects that enable otherwise unconnected communities to develop, therefore contributing to local aid and development.

Satellite technology provides also governments with infrastructure for government communications networks and immediate connectivity in times of disaster. Satellite communications are an essential communications back-up for national telecommunications network continuity where terrestrial networks have been impaired or destroyed.

Existing Restrictions

However, certain countries in different regions impose restrictive regulatory procedures and unfavourable treatment on foreign satellite operators including burdensome licensing conditions, requirements for unnecessary and duplicative national infrastructure, changes in spectrum allocation decisions, disparate fiscal treatment, high equipment importation duties, and requirements of national commercial presence. Some barriers have developed in form of domestic rules designed to favour only the development of the national satellite market and space industry and to turn domestic service providers towards using national satellite operators.

All these restrictions influence negatively the development of regional and global communications infrastructure as well as the evolution of national communications systems. Such discriminatory treatment directly affects the ultimate choice of services that distributors can offer to end-users, as well as negatively impacts service costs to end-users. Particularly concerning are cases where satellite coverage exists today, but market access is denied. This undermines the substantial up-front investment made by satellite operators and denies the users in a given territory the benefits of satellite services that would otherwise be immediately available.

Market Access *Open Skies* Approach

Open Skies approach allows nationally-authorized service providers to choose any satellite operator or satellite service provider to distribute the specific services to the specific service area(s) required for their end-users (national and international). This approach does not treat foreign satellite systems any differently than national satellite systems and ensures the maximum amount of competition among satellite operators to the benefit of national service providers and consumers. An *Open Skies* policy does not impose artificial limits on market entry, excessive licensing fees, or unnecessary formalities beyond registration of technical criteria on foreign satellite operators.

ESOA Members, satellite operators and satellite-based service providers need to be able to offer following services on a non-discriminatory basis to authorized entities and users for service to, from or within the territory of every country:

- "Bare" satellite capacity (similar to submarine cable capacity or "dark" fiber);
- Satellite-based communications networks (similar to a GSM network);
- Satellite-based communications services (public or private);
- Portability for satellite terminals (mobile and transportable).

Market Access Recommendations - Favourable Policy Principles

ESOA invites governments and their national regulatory authorities (NRAs) to consider the following *Open Skies* principles as reference guidelines to reduce regulatory and market access barriers for the provision of satellite services. Special focus should be put on the following:

- To make the provision of bare satellite capacity unrestricted - there is no need to require licenses or to impose other regulatory requirements on satellite operators for the provision of satellite capacity. In the European Union, this activity is totally deregulated and does not discriminate between EU and foreign satellite operators.

- Provide national treatment for foreign satellite operators - Most Favoured Nation ("MFN") exemptions and any other limitations that put satellite operators at a disadvantage should be avoided. In particular, national governments ought not to give preferential or exclusive treatment to emerging national and intergovernmental satellite operators to the detriment of foreign operators.
- Eliminate local entity and/or local presence requirements - many administrations around the world do allow foreign satellite systems to provide their services to domestic entities without requiring local establishment or incorporation. These countries recognize that it is unnecessary to require corporate subsidiaries or branch offices and in fact, would be infeasible for global satellite operators to maintain such subsidiaries or branches in all countries in the satellite footprint. To facilitate cross-border services, if a registration is deemed important, countries should only require a local post address to receive official licensing correspondence. ESOA urges all NRAs across the world to follow these examples and streamline their procedures so that foreign satellite operators are not required to be licensed through a local company or legal representative. In addition, restrictions on foreign ownership or foreign direct investment in entities permitted to access

foreign satellite capacity and services add a further market access limitation for European satellite operators.

- Provide transparent and non-discriminatory authorisation procedures - the authorization of space stations is done by the satellite operator's home licensing administration, and there is no need to duplicate it in other countries. Licensing procedures, applicable to national service providers, should be streamlined and transparent and should be the same regardless of whether they access domestic or foreign satellite systems. NRAs should also act on applications to provide services using foreign and domestic satellite systems alike within a reasonable period of time (e.g., not more than six months), and to apply procedures and fees that are no less burdensome than those for use of national satellite systems. Licensing fees and other regulatory / administrative charges ought to be limited to the recovery of the actual costs of the NRA's activity only in relation with the regulation of satellite services. Finally, there should be no different treatment or licensing conditions for the use of satellite access technology, as compared to the use of other wireless technologies.

- Eliminate burdensome frequency coordination requirements - market access for foreign satellite operators should not be linked with the completion of the ITU satellite coordination process.

- Eliminate monopolies - no special monopoly status should be afforded to incumbent telecommunications operators or satellite systems. Foreign satellite operators should not be obliged to use national incumbents as intermediaries in the sale of foreign satellite capacity. Foreign satellite operators should be able to compete on a level-playing field with domestic satellite operators and terrestrial communications systems to sell satellite capacity directly to any nationally-licensed operator, such as to a broadcaster, telephone company, internet service provider, corporation/enterprise, or VSAT service provider.

- Permit the transport of video signals and associated audio signals - ESOA urges NRAs not to prohibit the delivery of video and associated audio services via satellite (including exclusions by law, through a country's WTO offer or via a bilateral reciprocity agreement). There is a critical difference between (1) the satellite capacity leased or sold to a nationally-authorized service provider (telecoms or broadcaster), and (2) the content that those nationally-authorized service providers select to distribute via satellite. The majority of satellite operators do only (1) so they do not

directly select and offer content or programming. Nationally-authorized service providers should be allowed to use foreign satellite operators to deliver video programming and associated audio signals including for Direct-to-Home (DTH) services, since satellite operators merely provide a transport service (i.e. transmission) of the content developed by licensed broadcasters and telecoms providers.

- Permit free circulation and use of satellite consumer terminals - in all cases, satellite consumer terminals and other end-user satellite equipment should be exempted from custom duties, not subject to duplicative testing or type approvals and, to the extent possible, freely deployable. It is essential that this satellite equipment is exempted from individual licensing or the licensing of an unlimited number of technically identical terminals is permitted.

- Address security concerns adequately - national governments sometime fear that customers might transmit over foreign satellites and/or might not be controllable, leading them to impose additional market barriers such as the installation of costly local technical facilities in their territory. In order to address these concerns, ESOA members propose to adhere to the following principles:

  - In the case of Fixed Satellite Services (FSS), those who 'uplink' to a satellite are responsible entities operating according to authorized procedures with appropriate licenses, but in a way that does not differ between foreign and domestic operators
  - In case of Mobile Satellite Services (MSS), solutions other than local gateways aimed at controlling satellite signals locally can be considered carefully, through a dialogue with the satellite operator

Recommendations Based on Best Practices and ITU Harmonization Rules

ESOA encourages all countries around the world to adhere to the Telecommunications Reference Paper of the 1997 WTO General Agreement on Telecommunications, take note of recognized best practices as well as to the technology neutral principles embodied in the ITU Chairman's Note on Scheduling.

NRAs should also work with other members within their region to ensure an exchange of information on the possible requirements, with a view of developing a regionally harmonized approach to ground segment and network service licensing. Services in harmonized spectrum should be subject to no more than a general authorisation and should not require an explicit consent prior to commencing service. The European Union is a good illustration of such an integrated regional policy, where the regulatory regime on telecommunications has considerably evolved towards more openness and simplicity over the last decade.

Finally, one of the greatest benefits of satellite communications, the regional and global coverage of satellites which enables the possibility of services across borders in multiples of countries at once, is largely dependent on harmonized allocation of satellite frequencies. All NRAs should therefore adhere to the ITU Table of Frequency Allocations and ensure that existing ITU primary frequency allocations to satellite services are maintained and respected.

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