



MARKET ACCESS PRINCIPLES & OPEN SKIES POLICY

FOR SATELLITE COMMUNICATIONS

Introduction – Satellite Services & Open Skies

The need for Open Skies 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 regional and very often global – three of ESOA's member companies operate global satellite constellations - and many more support countless additional satellite-based businesses and networks creating economic development worldwide.

Once in space, satellites can reach many 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. Indeed, 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 characteristically overcome 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 issues, 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. Although it may not be obvious, Open Skies & other appropriate regulatory policies are essential to achieving these objectives. For these reasons and others that ESOA has articulated, satellite services should be prioritized by the EU in its trade negotiations.



Benefits of “Open Skies”

One of the most fundamental regulatory policies for ESOA¹ members and the satellite industry around the world is the “Open Skies” policy. An “Open Skies” policy for satellite services is one where 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” is an effective regulatory approach applied by the majority of countries in the world. Experience in these jurisdictions has shown that an “Open Skies” 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.

In driving a country’s growth in the satellite communications sector, a competitive domestic market and a healthy environment for innovation generates efficiencies that spill into other communications sectors as well. As an illustration of this effect, 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, satellite provision drives the development and deployment of new services, such as HDTV in Europe, Internet broadband services in Africa, or mobile TV in Asian countries (e.g. Korea and Japan) or in Europe soon.

It is also to be emphasized that foreign satellite operators are often the bearers of key applications such as tele-education and tele-medicine or are the initiators of novel local projects that enable otherwise unconnected communities to develop, therefore contributing to local aid and development.

¹ The European Satellite Operators' Association (“ESOA”) represents the interests of the satellite industry with key national, European and international organisations. ESOA's goals include ensuring that satellites benefit from the appropriate political, industrial and regulatory environment to fulfill their vital role in the delivery of communications. Members of ESOA are: Astrium Services, Eurasiasat, Eutelsat, HellasSat, Hispasat, Inmarsat, Intelsat, SES, SES Sirius, Telenor and Telespazio. In addition, Arianespace, Avanti, Astrium Satellites, International Space Brokers, Mansat, Newtec, Solaris Mobile, Thales Alenia Space and Willis are Supporting Members of ESOA. Further details about the ESOA can be found at www.esoa.net



Furthermore, satellite technology provides 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.

Market Access Expectations

Specifically, an 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). An Open Skies 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 satellite operators and European satellite-based service providers need to be able to offer the following on a non-discriminatory basis to authorized entities and users for service to, from or within the territory of every country:

1. “Bare” satellite capacity (similar to submarine cable capacity or “dark” fiber);
2. Satellite-based communications *networks* (similar to a GSM network);
3. Satellite-based communications *services* (public or private);
4. Portability for satellite terminals (mobile and transportable).

Existing Restrictions

However, certain countries in different regions of the world do 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. Even more subtle barriers have started to develop in the form of domestic rules designed to favour the development of the national satellite market and space industry and to turn domestic service providers towards using national satellite operators, their technical facilities, their staff, or to prioritize access to the market of government services to national satellite operators only.

All these inhibit 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 impacting service costs to end-users. Particularly troubling are some 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.

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. These principles are as follows:

1. **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.
2. **Provide National Treatment for Foreign Satellite Operators.** Most Favoured Nation ("MFN") exemptions and any other limitations that put European 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.
3. **Eliminate Local Entity/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 of 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.

4. **Provide Transparent, 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.
5. **Eliminate Burdensome Frequency Coordination Requirements.** Market access for foreign satellite operators should not be linked with the completion of the ITU satellite coordination process.
6. **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.
7. **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.

8. **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.
9. **Address Security Concerns Adequately.** National governments sometime fear that undesirable customers might transmit over foreign satellites and/or might not be controllable, leading them to impose additional market barriers such as the installation of useless and costly local technical facilities in their territory. In order to address these concerns, ESOA members propose to adhere to the following principles:
 - a. 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
 - b. In the 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 & ITU Harmonization Rules

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

NRAs should also work with other members within their region to ensure an exchange of information on the lightest 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.