



## COMMENTS ON THE OPERATION AND EFFECTIVENESS OF WTO OFFERS FOR TELECOMMUNICATIONS NOVEMBER 2008

### NECESSARY ELEMENTS IN WTO OFFERS

1. *Provide transparent, non-discriminatory procedures.*
2. *Delete or eliminate local entity/local presence requirements.*
3. *Provide national treatment for foreign operators.*  
*Eliminate burdensome frequency coordination requirements.*  
*Eliminate monopolies.*
4. *Permit the transport of broadcast video signals and associated audio signals.*
5. *Countries should not mandate deployment of particular technologies to achieve technical and policy requirements.*

### I. COUNTRIES WITH WTO ACCESSIONS IN PROGRESS

Afghanistan	Lao People's Democratic Republic
Algeria	Lebanese Republic
Andorra	Republic of Liberia
Azerbaijan	Libyan Arab Jamahiriya
Bahamas	Montenegro
Belarus	Russian Federation
Bhutan	Samoa
Bosnia and Herzegovina	Sao Tomé and Príncipe
Comoros	Serbia
Equatorial Guinea	Seychelles
Ethiopia	Sudan
Iran	Tajikistan
Iraq	Uzbekistán
Kazakhstan	Vanuatu
	Yemen

In the context of the specific discussions regarding the ascension to the WTO of Kazakhstan and the Russian Federation, ESOA wishes to underscore our concerns on their specific offers:

## 1. Kazakhstan

- Background: Kazakhstan launched its first national satellite (KazSat 1) in June 2006, and has announced it has a second spacecraft, KazSat-2, under construction for launch in December 2009. The first satellite has Fixed Satellite Service (FSS) and Broadcasting Satellite Service (BSS) frequencies on it, as will the second. KazSat has also indicated that they are planning to launch a third satellite (KazSat-3) in 2013.
- National and non-discriminatory treatment: There should be no preferential or special treatment *vis-à-vis* any domestic or global satellite system. The government has started to require certain Kazakh satellite service providers to move some of their services to the KazSat satellite system. In addition, the Kazsat officials have noted to satellite operators that government-related traffic would be required to go on the national satellite system (and they have not clarified whether this would only be for governmental customers or also government-owned commercial entities). With regard to VSAT licensing, Kazsat officials have, as recently as 4<sup>th</sup> Quarter 2008, indicated that the government would likely adopt a Russian-like VSAT licensing approach. This means that, for VSATs operating with foreign satellite operators, high fees could be imposed together with burdensome and time-consuming procedures. For VSATs operating with the Kazsat domestic operator, the licensing could be expected to be very easy and timely.
- Local presence: The establishment of a commercial presence, a burdensome and unnecessary requirement for service provision, would appear to be required if services can only be provided to “juridical” persons of Kazakhstan. This could hinder the provision of private network services in particular, such as for the oil and gas industry. Furthermore, limitations on foreign investment in telecommunications service providers (previously a maximum 49%) if they remain in the current offer, should be removed prior to allowing Kazakhstan to enter the WTO. Kazakhstan should not impose any regulatory requirements for a gateway or billing center on the provision of satellite services or satellite capacity to authorized entities in Kazakhstan. That is, the country should permit the use of VSAT systems whose network control centers (hub) stations are located outside of Kazakhstan.
- Transport of video signals should be allowed: Kazakhstan should not exclude authorized broadcasters from the entities which can purchase space segment directly from foreign satellite operators.

## 2. 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 satellite 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 European 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 concern 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 prohibit broadcasters from purchasing 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.

## II. WTO COUNTRIES WHOSE OFFERS NEED TO BE IMPROVED

Andean Community  
Argentina  
Bangladesh  
Brazil  
China  
Egypt  
India  
Israel  
Korea

Malaysia  
Mexico  
Philippines  
Saudi Arabia  
South Africa  
Thailand  
Vietnam  
Venezuela

### 1. Andean Community

- Landing Rights: Colombia has drafted new regulations requiring satellite operators to register with “CAN” the Andean Community of Nations (Comunidad Andina de Naciones) who adopted a decision in Dec 2008 that requires all satellite operators to re-license their satellites at the supranational CAN level, in order to maintain valid national level authorizations in the four member countries. This impacts Bolivia, Colombia, Ecuador & Peru . This new regulation introduces a new term, “landing rights”, not required till now in Colombia and considers providers of spatial capacity as providers of network and services.

ESOA request: To remove these provisions.

- Once foreign satellites are registered with CAN, the satellite operators must provide CAN with specific information about contracts with customers located in the member states.
- The provision of this information to CAN is very worrisome to satellite operators, because: (1) it is commercial confidential information and jeopardizes the confidentiality of satellite operator contracts with their customers; (2) the contracts are not filed with the regulators directly; and (3) it is duplicative of much of what is required by regulators in Peru and Bolivia already.

NOTE: Ecuador has recently streamlined their satellite regulations so as to remove many of the satellite operator reporting requirements and fees to be paid. While Ecuador retains an authorization process before foreign satellites can be used in Ecuador, this deregulatory approach is to be commended. Compare this with Peru where satellite operators have to go through a cumbersome process to acquire their licenses & also are required to disclose commercial contracts with customers. However, Ecuador maintains the obligation to obtain, in addition, a special license to operate TV broadcasting (DTH) with the burden to pay 1% of the amount of every contract. These regulations come from the former system remaining in force and they contradict the general license and imply a duplication, since the satellite operator must again introduce the same documents already required to apply for the general license.

ESOA Request: To remove this kind of requirements.

- **ESOA Request:** We urge CAN and its Members to streamline its process and eliminate redundancies with the national processes of its member states. For example, we encourage the elimination of requirements to provide customer contract information or any information such as corporate or technical information that is duplicative of information already required by and provided to the national authorities.

## 2. Argentina

- **ESOA Request:** In 1999, the Netherlands & Spain reached their own agreements with Argentina to allow provision of fixed satellite services from these countries. The Commission should seek to augment or replace these agreements with an overall arrangement allowing access for all EU operators, no need to discriminate between different EU companies.

## 3. 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.

## 4. 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 European 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 allowed to serve the European market.

## 5. China

- National treatment: National treatment is not provided to foreign satellite, operators China is a restricted satellite market. Foreign satellite operators are required to obtain government approval or enter into a contract with a “qualified domestic entity” in order to provide services in China. Foreign operators are prohibited from leasing transponder capacity directly to end-users without prior approval of the Ministry of Information and Industry (“MI”). All previously authorized satellite service providers in China were domestic companies (China Orient and Sinosat). In December 2007, these two entities were consolidated into a new entity to be named China Direct Broadcast Satellite Co., Ltd. (China DBSAT). In addition to China DBSAT, only AsiaSat and APT are allowed to provide satellite services in China through a grandfathered arrangement.
- Cross border supply: The cross-border provision of satellite service today is hampered by the restricted means by which foreign satellite services (Mobile-Satellite as well as Fixed-Satellite Services) can be used for communications into and out of China, and by the near-impossibility of new entry, be it Chinese or foreign, into the domestic service provision market.
- Monopoly: China DBSAT is expected to continue to have a monopoly for the provision of satellite services.
- Transparency: There is a lack of transparency in satellite regulation in China.

## 6. Egypt

- Transparency: There are no established regulations; regulatory policies in Egypt are unknown and/or ad hoc.
- Lack of open competition: While Egypt has made recent strides towards competition, the market for the provision of satellite services in Egypt remains limited. Egypt has a national satellite operator (Nilesat) and four VSAT licensees. The four VSAT licensees (Alkan, Egyptian Satellite Channel, EgyptSAT and African Waves) can only use National Telecommunication Regulatory Authority (NTRA) approved space segment (which includes space segment from several international providers).

## 7. India

- Restrictions on the use of foreign satellite capacity: The Ministry of Information & Broadcasting (“MIB”) has established guidelines that provide a preference for Indian satellites to provide direct-to-home (“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. The formal DTH policy states that Indian satellites will be given preference and as a result, Indian DTH and telecom licensees are not able to contract directly with foreign operators even if the satellite coordination has been completed and Indian satellite capacity is unavailable. In fact, it is significant that all 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 no other available capacity on its system of Indian satellites, with the exception of some international, closed-user group applications.

- 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.
- Restrictions on VSAT services: The provision of VSAT services is stifled by unnecessarily restrictive policies. Current Department of Telecommunications (DoT) policy states that VSAT services can only be offered to closed user groups (CUGs) and as a result VSAT services to consumers (e.g. two-way broadband services) cannot be directly enabled.
- Communications equipment authorizations: In addition, similar to practices in Europe and other countries, India should be encouraged to adopt licence exemption regulations for certain satellite terminals (mobile satellite handsets, VSAT terminals) which meet relevant international standards and to streamline the national type approval processes overseen by DoT.

## 8. 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.
- Lack of open competition: Companies seeking authorization to install and operate an earth station to access or use capacity on a foreign satellite in order to provide telecommunications services in Israel require a variety of permits and licenses (wireless license, telecommunications services license, type approval license, trading license, and special import license). These licenses are specifically tailored to the particular operator, rather than broadly defined. If the applicant for a wireless station license is a foreign company, then it must form a local subsidiary (either as a registered Israeli branch of a foreign company or as an Israeli registered subsidiary) to hold such license. In addition, the applicant for a wireless station license must not constitute a security risk to the State.

## 9. 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).

- Foreign ownership constraints: In the 2005 Korean WTO offer, there is a requirement that the provision of all telecommunications services be subject to commercial arrangements with licensed Korean service providers. ESOA would be concerned if their improved offer still retains restrictive foreign ownership limits (even if slightly improved over the WTO 1997 commitments), which would only allow entities to participate in an entity that can obtain a telecommunications license.
- Physical presence requirement: Foreign MSS operators are required to install a gateway in the country. This requirement is onerous, expensive and undermines spectrum and network efficiency.

## 10. Malaysia

- National treatment: There is a failure to provide national treatment for foreign operators in Malaysia and preference is given to local operators. The Malaysia government has mandated that Malaysian government-related agencies use satellite service operated by local companies. Use of satellite services operated by local companies is not mandatory for private sector companies, although such use is “encouraged”.
- Transparency: The Communications and Multimedia Commission implements and enforces the provisions of communications and multimedia laws in Malaysia, and also advises the Ministry of Energy, Communications and Multimedia on national policy objectives. When an applicant files for an earth station authorization, this authorization is reviewed by the Commission, which in turn makes a recommendation to the Ministry. The Ministry has broad “discretion” to grant or not to grant authorizations.

## 11. 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 if they were to serve the European market.
- Security concerns: MSS operators are required to 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 if they were to serve the European 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.



## 12. 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) for providing space segment capacity. The preference for local operators in the Philippines is found in Memorandum Circular No. 4-3-99.
- Local presence: Foreign satellite operators actively seeking customers in the Philippines are required to establish a "local commercial presence".

## 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: Shin Satellite has had an exclusive arrangement with the Communication Authority of Thailand ("CAT"), which results in the Thaicom satellite system being the *de facto* platform authorized in Thailand.
- Transparency: The National Telecommunications Commission ("NTC") has not developed any satellite related regulations.

## 16. Vietnam

- National treatment: Vietnam has its own satellite system (Vinasat) which has yet to be launched. Once launched, there should be no preferential or special treatment *vis-à-vis* any of the other local or global satellite systems. Vinasat should not enjoy any special privileges in the provision of interim capacity it may lease from existing satellite systems. 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). Finally, since the launch of the Venezuelan national satellite, Simon Bolivar, in October 2008, the Venezuelan government has indicated in press statements that it will move all government satellite traffic off foreign satellites to the Venezuelan satellite. These regulations and rules have not yet been formally adopted, but are of high concern for ESOA.
- Local presence: Draft regulations on satellite services classify the sale of space segment as a "service", which will require 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.

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