



PUBLIC NOTICE

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**INTERNATIONAL BUREAU INVITES COMMENT
FOR FOURTH ANNUAL REPORT TO CONGRESS
ON STATUS OF COMPETITION IN THE SATELLITE SERVICES INDUSTRY**

IB Docket No. 10-99

Comments Due: August 23, 2010

Reply Comments Due: September 7, 2010

Section 4 of the Communications Satellite Act of 1962 (Com Sat Act), as amended,¹ requires the Commission to submit to Congress an annual report (“Satellite Competition Report”) that analyzes the competitive market conditions with respect to domestic and international satellite communications services.²

The Report must include:

- (1) an identification of the number and market share of competitors in domestic and international satellite markets;*
- (2) an analysis of whether there is effective competition in the market for domestic and international satellite services; and*
- (3) a list of any foreign nations in which legal or regulatory practices restrict access to the market for satellite services in such nation in a manner that undermines competition or favors a particular competitor or set of competitors.³*

The International Bureau (Bureau) invites interested parties to submit comments into the record for the Fourth Satellite Competition Report (“*Fourth Report*”), which will analyze the 2009 calendar year. The Bureau seeks input on frameworks and information that might be used to define the relevant industry segments for domestic and international satellite services and thereby to fulfill the three mandates listed above.

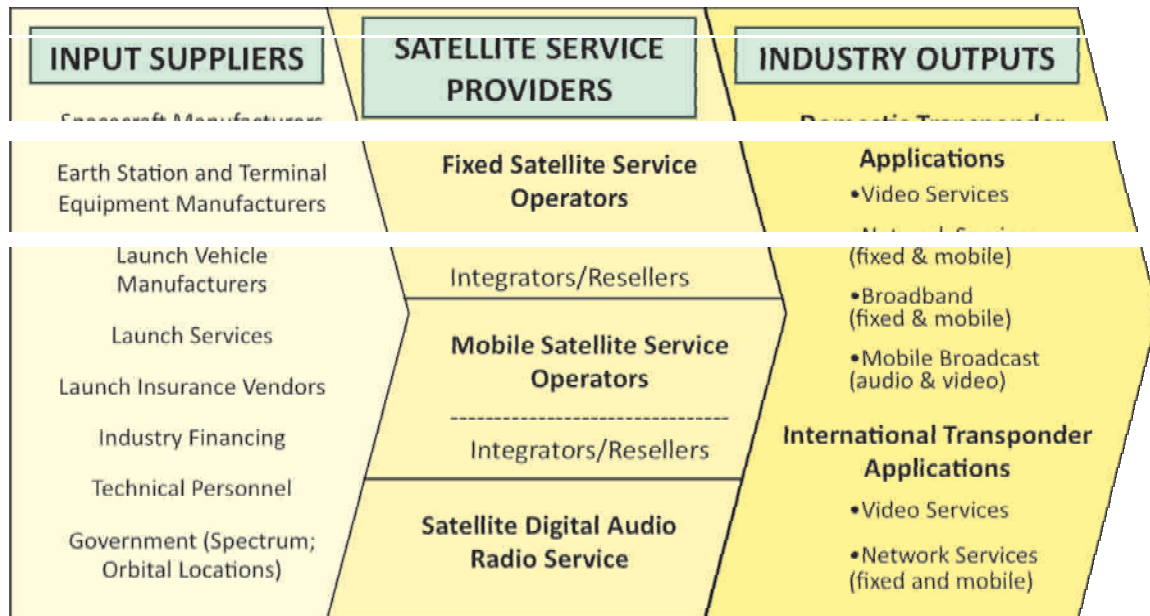
¹ Communications Satellite Act—Amendment, Pub. L. No. 109-34, 119 Stat. 377 (2005) (“Amendment Act”). The Amendment Act amended the Communications Satellite Act of 1962, 47 U.S.C. § 701 *et seq.*

² Com Sat Act, § 4(a).

³ *Id.* at § 4(b)(1)-(3).

Figure 1 below displays the proposed scope of the *Fourth Report*, which expands on prior *Reports* to include major input suppliers (of equipment and services) to satellite operators.⁴ Major suppliers to satellite operators are listed in the far left-hand segment of Figure 1, while the broad types of commercial satellite operators are shown in the center segment.⁵ A listing of the broad types of outputs produced by commercial satellite operators is shown in the far right-hand segment of Figure 1.⁶ This *Public Notice* seeks comment on the proposed scope for the report.

Figure 1. Proposed Scope of Fourth Report



The following sections explain in greater detail the types of data and information we seek, beginning with sections addressing Industry Structure, Conduct, and Industry Performance. This framework is used simply as a way of organizing information. We invite comment on the most appropriate analytical framework to employ in the *Fourth Report* for assessing the status of competition.

⁴ Figure 1 portrays an aggregate production function for the satellite communications industry. It is intended to show the types of inputs used by satellite operators to produce various applications of satellite transponder capacity and to highlight causal connections internal to the industry, namely, the efficient combination of capital, labor, and materials along with technical knowledge to produce output. The nature of bargaining between the suppliers of inputs and satellite operators and the bargaining relationship satellite operators and their wholesale customers are especially important in understanding the financial performance of the commercial satellite communications industry over the long term.

⁵ As in prior Reports, we do not anticipate considering in the *Fourth Report* those satellite-based Multichannel Video Programming Distribution (MVPD) sectors, as competition in those segments is currently addressed in the annual MVPD competition reports to Congress. See, e.g., *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, 24 FCC Rcd 2524 (2009) (“*Thirteenth Annual MVPD Competition Report*”).

⁶ The listing of industry outputs in Figure 1 is only illustrative and not exhaustive. For example, a more detailed delineation of outputs would recognize the distinction between outputs supplied to customers at both the wholesale and retail levels.

I. Industry Structure

A. Industry Outputs

The Bureau expects that the *Fourth Report's* analysis of industry structure will examine the degree of concentration and the ease of entry into and exit from the industry segments that are portrayed in the Figure above. We welcome specific suggestions providing a more detailed delineation of industry segments or alternative categorization of industry outputs for analyzing the state of competition in satellite communications.

B. Industry Inputs

We request comment on whether and to what extent certain sectors providing inputs to satellite communications services influence the structure, conduct, or performance in the industry for satellite communications services. In particular, to what extent do input suppliers to communications satellite operators exercise bargaining power in their contractual relationships with such operators that constrains the financial performance of satellite operators, pricing decisions, innovation, capacity expansion, or corporate strategy options in general?⁷ For example, are firms in the satellite construction industry able to bargain so effectively with satellite operators that expected profits from the sale of satellite communications services over the life of spacecraft are severely constrained? Does the cost of launch insurance adversely affect the timing of capacity expansion or the nature and type of satellite that a satellite operator can launch? How does the structure of the capital markets affect the availability of funding for satellite communications firms? Are there other industries that are interrelated with or influence the segment for satellite communications services?

C. Participants

The Bureau seeks information on the number of firms in each industry segment, and an identification and description of outputs provided in each segment. We also seek information concerning the types and number of buyers of services (including both number of firms and number of subscribers) in each industry segment.

D. Horizontal Concentration

The Bureau seeks detailed factual information concerning U.S. sales revenues by product or service for the reporting period. If possible, we ask commenters to break down revenue into relevant price and quantity components. For wholesale providers, we seek objective data on satellite capacity (number of available transponders, number of transponders used, or other capacity measures) by participants in each industry segment. For retail providers, the Bureau also seeks information on segment shares based on the number of subscribers or customers served by each segment participant (firms). Finally, we invite commenters to propose other reasonable measures of segment shares.

The Bureau also invites comment on the effects of industry consolidation and corporate reorganization on the satellite communications services industry. How has consolidation affected

⁷ Input suppliers to the communications satellite operators include, but are not limited to, the satellite construction industry; the launch vehicle and services industry; the satellite insurance industry; the satellite finance industry, including private equity firms; and the earth station and terminal equipment industries.

innovation or consumer choice in products offered? Has consolidation affected rural areas differently than urban areas? What have been the effects on competition in the satellite communications industry, if any, of using private equity funding to finance mergers and acquisitions of satellite system operators?

E. Entry Conditions

The Bureau invites comment on entry conditions in each industry segment. Specifically, the Bureau seeks information on cost structures in each industry segment, especially information on the presence of large sunk costs that may influence the ease of entry and exit.

The Bureau also invites comments on barriers to entry, or, more generally, the costs of entry into the relevant satellite communications industry segments. Barriers to entry may include, but are not limited to, first-mover advantages, spectrum allocation, and the allocation of orbital locations, as well as effects of governmental regulation and policies. The Bureau seeks information on these and other types of barriers to entry or entry costs in all relevant satellite communications services industry segments.

The Bureau invites comment on whether there is access to sufficient spectrum, through Commission spectrum allocation, to prevent lack of access to spectrum from becoming a significant barrier to entry in the satellite communications services industry. Are existing service providers spectrum-constrained? If so, in which geographic segments are firms most likely to be constrained? Have these service providers become more spectrum-constrained after rolling out advanced services like high-speed Internet access and high definition digital television? Do potential entrants have sufficient opportunities to access spectrum and orbital locations? Are there other barriers that limit access to spectrum?

The Bureau also seeks information and analysis of the probable effects of potential entrants on the nature and intensity of rivalry among existing competitors in both domestic and international industry segments for communications satellite services. In addition, information on the effects of substitute products and services on rivalry among satellite competition is also requested. For example, to what extent does the growing deployment of fiber optic cable affect how satellite operators compete on price or quality? Does the threat of new entrants constrain the pricing behavior of incumbent satellite operators? If so, in what ways and to what extent?

II. Conduct

A. Price Rivalry

The Bureau seeks information on U.S. pricing plans for satellite communications services, including for wholesale products, price per transponder or portion thereof (transponder lease rates or satellite capacity sales prices) or price per megabit of transmission capacity, and for retail segments, for varying tiers of services offered in regions throughout the United States. What distinct characteristics, if any, affect the pricing practices observed in the satellite services industry? To what extent do pricing plans reflect price rivalry among firms, both among satellite-based companies and among differing technology platforms? In addition, the Bureau invites comment on the extent to which satellite firms in their pricing plans differentiate between different types of satellite communications services. Do satellite firms offer short-term or long-term pricing plans? To what extent is transponder pricing determined by bilateral negotiations

between satellite service providers and their customers? To what extent do retail satellite services respond to pricing changes in alternative terrestrial services?

B. Non-Price Rivalry

The Bureau seeks information regarding any non-price rivalry among satellite firms, especially competition based on quality differences. To what extent do satellite communications operators invest in research and development to gain competitive advantage or compete by improving service quality? To what extent is the level of capital expenditures by satellite firms affected by service innovation? On which service innovations have satellite firms focused their investment or marketing strategies? Have capital expenditures by satellite firms increased or decreased in the last five years? How important is capacity expansion to communications satellite operators as a competitive strategy? How have satellite firms changed their marketing strategies in the last five years to respond to competitors within the satellite sector or other technology competitors?

C. Consumer Behavior

The Bureau invites comment on the development of customer information sources for satellite communications services. With respect to retail services, are there new avenues for customers to gain information, such as retailers providing on-line and in-store comparisons of pricing plans, services, and equipment? How often do customers/buyers switch firms providing satellite communications services (*i.e.*, what is the level of “churn” in the various industry segments and is it increasing or decreasing)? If there is significant switching by customers/buyers, is this in response to price, coverage, and/or quality-of-service differences? To what extent do customers compare satellite-based services with other non-satellite-based services? With respect to wholesale satellite services, to what extent can buyers of such services exercise bargaining power in satellite communications service segments? What is the extent and effect of aggregators on the price and other terms and conditions of wholesale satellite communications services?

D. Other Conduct

All industry sectors to be included in the *Fourth Report* have experienced significant structural change in recent years. In particular, mergers and acquisitions in each sector have tended to increase industry concentration and increase the size and scale of incumbent firms. Given the barriers to entry in each industry sector, increased concentration may be contributing to, or providing incentives for, the possible exercise of market power by incumbent firms, both with respect to certain end-users and to competitors seeking access to the space segment of large satellite operators. Has any communications satellite operator in any satellite industry sector acquired sufficient market power to impair competition in any sector? If so, which one(s)? Has any operator used its market power to deny access to transponder capacity to competing satellite communications service providers; otherwise restrict the contracting opportunities of non-facilities-based system integrators and resellers of transponder capacity; delay innovation in the delivery of communications satellite services; or impede the efficient utilization of spectrum and orbital locations allocated to the respective satellite industry sectors? Has the possible exercise of market power by satellite operators in any sector adversely affected end-users of satellite communications services, such as increasing output price or restricting the quantity of service or scope of services available to consumers? Notwithstanding the possible exercise of market power by satellite operators in any satellite sector, are there any instances of improved operating

efficiencies that have created offsetting benefits that have flowed through to end-users of satellite communications services? In other words, have consumers realized some increase in net economic benefits in recent years even though confronted with possible instances of the exercise of market power by satellite operators in the FSS, MSS, or SDARS industry sectors? In addition, we invite comment on any other issues concerning conduct that will assist us in our statutory mandate to analyze competitive performance with respect to domestic and international satellite communications services.

III. Industry Performance

The Bureau seeks information for the analysis of various industry performance metrics, including pricing levels and trends, subscriber growth and penetration, innovation and diffusion of services, and quality of service. Specifically, the Bureau seeks five-year time-series data on U.S. revenues for each industry segment, firm profitability, cash flows, and cash-flow margins for the satellite communications services industry segments. If possible, we ask commenters to break down revenue into relevant price and quantity components.

Are there any other quantitative or qualitative metrics that would add significantly to the Bureau's analysis of industry performance? Are these metrics available on a national or international level, and are they available for a five-year time period?

IV. Access To Foreign Markets

The Bureau also seeks information on the legal or regulatory practices of foreign nations that have the effect of restricting access to that nation's market for satellite services. What types of legal or regulatory practices hinder U.S. firms from fully participating in a given foreign market? Are there foreign legal or regulatory practices that favor a particular competitor or set of competitors? Are there activities by U.S. government agencies, including the U.S. Trade Representative, that have affected market entry for U.S. satellite firms into foreign markets?

V. Summary

Industry members, members of the public, and other interested parties are requested to provide information, comments, and analyses regarding competition in the provision of satellite services. To facilitate an analysis of competitive trends over time, parties should provide current data as well as historic data that are comparable over time. Commenters desiring confidential treatment of their submissions should request that their submission, or a specific part thereof, be withheld from public inspection.

The accuracy and usefulness of the Report and its findings are related directly to the quality of the data and information we receive from commenters. For previous Reports, we relied upon data from publicly-available sources where information was not provided directly by industry participants, and we will do so again to the extent necessary. Nevertheless, we are concerned that such publicly-available data may not be adequate to gain a full understanding of the state of competition in the industry for satellite services. Accordingly, we urge commenters to provide us, to the extent possible, with complete and accurate information directly from industry sources, as well as from non-industry sources.

VI. Procedural Matters

Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the website for submitting comments.

For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.

Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C., 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD, 20743. U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, S.W., Washington, D.C., 20554.

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