COMMENTS OF THE SATELLITE INDUSTRY ASSOCIATION
TO THE BUREAU OF INDUSTRY AND SECURITY
REGARDING REVISIONS TO THE COMMERCE CONTROL LIST

The Satellite Industry Association (SIA), on behalf of its Member Companies,[1] hereby files its comments concerning revisions of descriptions of items and foreign availability on the Commerce Control List, in response to the U.S. Department of Commerce, Bureau of Industry and Security's advance notice of proposed rulemaking.[2] SIA is a U.S.-based trade association providing worldwide representation of the leading satellite operators, service providers, manufacturers, launch services providers, and ground equipment suppliers. Since its creation fifteen years ago, SIA has become the unified voice of the U.S. satellite industry on policy, regulatory, and legislative issues affecting the satellite business.

SIA supports rigorous, effective, predictable and transparent U.S. export control policies and practices that adequately reflect the current international trade environment. According to the White House, an interagency review concluded in 2010 that "the current U.S. export control system generally does not sufficiently reduce national security risk based on the fact that its structure is overly complicated, contains too many redundancies, and tries to protect too much."[3] While SIA agrees, and fully supports the Administration's efforts to reform the overall export licensing and policy framework, satellites[4] require a specific focus. SIA is particularly concerned with the twelve-year old legislative requirement mandating that virtually exports of satellites sold

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[1] SIA Executive Members include: Artel, Inc.; The Boeing Company; CapRock Communications, Inc.; The DIRECTV Group; Hughes Network Systems, LLC; DBSD North America, Inc.; Echostar Satellite Services, LLC; Integral Systems, Inc.; Intelsat, Ltd.; Iridium Communications Inc.; LightSquared; Lockheed Martin Corporation.; Loral Space & Communications, Inc.; Northrop Grumman Corporation; Rockwell Collins Government Systems; SES WORLD SKIES; and TerreStar Networks, Inc. SIA Associate Members include: Arqiva Satellite and Media; ATK Inc.; Cisco; Cobham SATCOM Land Systems; Comtech EF Data Corp.; DRS Technologies, Inc.; Eutelsat, Inc.; GE Satellite; Globecomm Systems, Inc.; Glowlink Communications Technology, Inc.; iDirect Government Technologies; Inmarsat, Inc.; Marshall Communications Corporation.; Panasonic Avionics Corporation; Spacecom, Ltd.; Spacenet Inc.; Stratos Global Corporation; TeleCommunication Systems, Inc.; Telesat Canada; Trace Systems, Inc.; and ViaSat, Inc. Additional information about SIA can be found at http://www.sia.org.

[2] *See* Commerce Control List: Revising Descriptions of Items and Foreign Availability, 75 Federal Register 76664 (2010).

[3] White House Office of the Press Secretary, "Fact Sheet on the President's Export Control Reform Initiative," April 20, 2010, http://www.whitehouse.gov/the-press-office/fact-sheet-presidents-export-control-reform-initiative.

[4] Unless otherwise noted, these comments use the terms "items," "satellites," "satellites and their components," and "supporting ground systems" as shorthand for the phrases included in applicable legislation: "commercial satellites, satellite technologies, their components, and systems" and "satellites and related items."

commercially be regulated as munitions. We are pleased that the Administration will provide Congress with its views on the national security aspects of this legislative requirement in their report requested by Section 1248 of the 2010 National Defense Authorization Act. SIA looks forward to the release of the Sec. 1248 Report as a next step in updating and rationalizing regulatory controls in line with other revisions to the United States Munitions List (USML). We believe that such changes in legislation are absolutely essential to ensure the health of the U.S. space industrial base.

While SIA does not at this time have comments on the descriptions of items of the Commerce Control List (CCL), we would like to offer a few general comments on how items on the CCL might be restructured into tiers of varying regulatory control. In its Federal Register notice, the Bureau of Industry and Security (BIS) offered the following tier definitions:

1. Tier 1: (a) weapons of mass destruction (WMD); (b) WMD-capable unmanned delivery systems; (c) plants, facilities, or items specially designed for producing, processing, or using WMDs, special nuclear materials, or WMD-capable unmanned delivery systems; or (d) items almost exclusively available from the United States and which provide a critical[5] military or intelligence advantage to the United States.
2. Tier 2: items that are almost exclusively available from regime partners or adherents and provide a substantial[6] military or intelligence to the United States, or make a substantial contribution to the indigenous development, production, use, or enhancement of a Tier 1 or Tier 2 item.
3. Tier 3: items that are more broadly available and provide a significant military or intelligence advantage to the United States or make a significant[7] contribution to the indigenous development, production, use, or enhancement of a Tier 1, 2, or 3 item, or are otherwise controlled for national security, foreign policy, or human rights reasons.[8]

While satellites and their components are the only category of items legislatively mandated to be treated as munitions, and thus are subject to control under the International Traffic in Arms Regulations (ITAR), some ground equipment used by satellite communications companies remains on the CCL. Specifically, this includes the network operations equipment that satellite communications companies use to manage the content which flows over their space-based infrastructure, such as: modulators/demodulators, up/down-converters, amplifiers, noise blocks, feed systems, antennas, VSAT hubs, routers, switches, signal generators, and monitoring equipment.

This type of equipment has no direct effect on the capacity of a country to develop WMDs or their delivery systems, nor does it contain technology that is sufficiently advanced as to provide a capability that would pose a serious threat to U.S. national security if not controlled.

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[5] "Critical" is defined as providing a capability with respect to which the United States cannot afford to fall to parity and that would pose a grave threat to U.S. national security if not controlled.
[6] "Substantial" is defined as providing a capability with respect to which the United States must maintain parity and that would pose a serious threat to U.S. national security if not controlled.
[7] "Significant" is defined as providing a capability that could be reasonably expected to cause damage to U.S. national security if not controlled.
[8] *See* Commerce Control List: Revising Descriptions of Items and Foreign Availability, 75 Federal Register 76665 (2010).

Much of this equipment is already present in tens of thousands of communications nodes across the world and is widely available in large quantities from a broad array of foreign countries. These countries include, among others: Australia, Germany, Italy, Germany, and the United Kingdom. The quality of the equipment available from these suppliers is generally competitive with that available from U.S. companies, and in some instances is actually more advanced due to export control-driven investments by foreign companies and governments. Because of its negligible national security impact and widespread availability, the equipment listed above does not, in our opinion, meet the criteria for listing on Tiers 1 or 2.

In general, SIA believes that, for licensing purposes, technical information associated with the items on the CCL should be treated in the same forum as the item. If a specific item is moved from the USML to the CCL, or from one Export Control Classification Number (ECCN) to another within the CCL, or from one Tier to another on the Single List, we recommend that its associated technical data, including operating procedures, be moved to the new ECCN or Tier along with the item in question.

SIA also believes that the goals of transitioning to a single, tiered, positive list might be supported by increasing the visibility of the Commodity Jurisdiction (CJ) process. The Department of State, through this process, has confirmed that many satellite-related components or ground system items are on the CCL. While the results of CJ determinations are not made public, SIA supports the inclusion on the CCL of the general parameters of those items confirmed to be subject to the EAR. This would have a number of beneficial effects, including a reduction in the number of redundant CJ requests and more complete information for use by companies when requesting export licenses.

SIA notes that the different definitions of “technology” and “technical data” on the Commerce Control List and U.S. Munitions List increase the burden of compliance with these requirements, and urge that, during the process of creating the single list, specific attention should be paid to developing common definitions for these terms.

Finally, SIA notes that according to the criteria for inclusion on Tiers 1, 2, and 3 as noted above, the international availability of an item should not be the sole governing criteria for determining the appropriate tier for an item. SIA believes that an item’s near-exclusive availability from the United States is not sufficient cause for placement in a higher tier of control. However, if an item is available from a broad range of international sources, the effects of stricter unilateral U.S. controls are likely to advantage foreign suppliers without affecting the proliferation of a technology to new destinations. Therefore, for some items, widespread international availability may be sufficient justification for placement in a lower tier of control. Furthermore, U.S. companies must be able to offer products, capabilities and technologies that exceed the international norm in order to be competitive.

SIA thanks BIS for the opportunity to comment on the ongoing export control reform process, and would welcome further opportunity to do so if more detailed discussions would be of value.

Respectfully Submitted,

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