
From: Walsh, Kathryn E.
Sent: Friday, September 25, 2015 10:13 AM
To: [REDACTED]
Cc: Berg, Karen E.
Subject: RE: Satellite Question

[REDACTED]

The new interpretation in the PNPM supersedes the informal interpretation you cite – we will update the informal interpretation accordingly.

The idea was to give people an easy way to determine whether the satellite is foreign or not, then the next steps in the analysis are clear.

If there's anything particularly unusual in your facts, you can let us know – that was what the case-by-case language was meant to capture.

Kate

From: [REDACTED]
Sent: Thursday, September 24, 2015 4:00 PM
To: Walsh, Kathryn E.
Subject: RE: Satellite Question

Hi Kate,

A couple years ago we had the e-mail exchange below about satellites and Inf Op 0701025 (<https://www.ftc.gov/enforcement/premerger-notification-program/informal-interpretations/0701025>). That interpretation says that “the physical location of the orbital slot (specifically whether it is over US territory or not) for the satellite is determinative of whether the satellite is a US asset or non-US asset.” It seemed to me that you confirmed that opinion was still in effect – although a foreign satellite could have US sales if its footprint touched on the US such that it was generating revenue from US customers receiving its services.

The 5th Edition of the Premerger Manual (#152), however, says “Whether a satellite is considered to be located in or outside the United States turns on whether its owner qualifies as a ‘foreign person’ under Section 801.1(e)(2)(i). If its owner qualifies as a ‘foreign person,’ the satellite is considered to be located outside of the United States.” But the Editor’s Note advises that it can be a case-by-case analysis and we should consult with the PNO.

Does the 2007/2013 approach still stand, such that the satellite is a “foreign” asset if its orbital slot is not over US territory? Or do I need to look to whether the owner is a foreign person? Or both? I’m trying to determine what questions I need to ask the parties.

Thanks,

[REDACTED]

From: Verne, B. Michael [<mailto:MVERNE@ftc.gov>]

Sent: Monday, July 15, 2013 10:17

To: [REDACTED] Walsh, Kathryn

Subject: RE: Satellite Question

Thanks for the clarification [REDACTED]. We would say it is a foreign asset and revenues from US customers receiving its signal would be sales into the US.

From: [REDACTED]

Sent: Monday, July 15, 2013 10:14 AM

To: Verne, B. Michael; Walsh, Kathryn

Subject: RE: Satellite Question

Mike and Kate,

Yes, these satellites are geostationary so they physically sit at the same coordinates above the Equator and over the Pacific Ocean – the “orbital slot.” The term “footprint” means its coverage area, the parts of the world where its signal can be received and thus where it can provide service.

Thanks,

From: Verne, B. Michael [<mailto:MVERNE@ftc.gov>]

Sent: Monday, July 15, 2013 8:24 AM

To: [REDACTED]; Walsh, Kathryn

Subject: RE: Satellite Question

[REDACTED] - we are a bit confused with your transaction. We thought that geostationary satellites stayed in the same position relative to the earth. What exactly do you mean by its footprint?

From: [REDACTED]

Sent: Friday, July 12, 2013 12:57 PM

To: Verne, B. Michael; Walsh, Kathryn

Subject: Satellite Question

Mike and Kate,

Is this informal interpretation still the view of the PNO? <http://www.ftc.gov/bc/hsr/informal/opinions/0701025.htm>

I'm looking at an acquisition of a foreign satellite company owning a few geostationary satellites with orbital slots over international waters in the Pacific Ocean. Their footprints cover North, South and Central America. Target otherwise has less than US\$70.9m in US assets, and derives less than US\$70.9m in sales from US customers. So I think it's clearly exempt, but since that opinion is more than 6 years old, I wanted to double-check with you.

Thanks,

[REDACTED]

[REDACTED]
