ACCRES Response to the American Space Commerce Free Enterprise Act

Commercial Remote Sensing Provisions

ACCRES Meeting August 24, 2017

Background: Land Remote Sensing Policy Act of 1992 presented several challenges to the remote sensing community

- Created long, unpredictable timelines for approval, and a presumption of "no" for licensees. Even systems with nowhere near leading-edge capabilities experience delays well in excess of the 120-day timeline mandated in the 1992 Act; delays in some cases have exceeded three years.
- Licensing process *de facto* requires concurrence of a large number of US Government stakeholders to approve a license (so any one can potentially block or delay a response) – contributes both to the delays and to the bias toward "no".
- Increased regulatory requirements imposed on licensees - repeated attempts to retroactively modify existing licensees, despite the effect this would have on investor certainty; tantamount to unilaterally and adversely changing zoning rules after a building has already been built and occupied.
- Regulations over-weighted national security concerns, partly by placing the licensing function within a deeply buried office within the Department of Commerce, which *de facto* disempowered advocacy for industry leadership except in the rare case where an issue was raised to the Secretary level by industry.

➢ In response to these concerns and others, in June 2017, the House Science, Space, and Technology Committee introduced (subsequently amended) the American Space Commerce Free Enterprise Act of 2017.

American Space Commerce Free Enterprise Act of 2017 addresses many of the challenges

- Simplifies the commercial remote sensing regulatory process.
- Framers take the position that the government shall issue a license to commercial firms unless it can show cause otherwise ("clear and convincing evidence" of a "significant threat to the national security").
- When denied, there is a clear process for private companies to challenge the denial.
- The Bill lays out a clear and simple certification process for missions beyond Earth orbit (administered by the Office of Space Commerce in the Department of Commerce).
- Amendment to the Bill indicates that the Secretary of Commerce shall consult with the heads of other relevant agencies (e.g., DoD, State, ODNI).
- The Bill also creates two committees to review aspects of the law after implementation to ensure that there is no "harmful interference to private sector activities" and to "facilitate and promote a robust and innovate private sector."

ACCRES supports the draft bill

- **Presumption of “yes”**
  - Establishes a fixed consent calendar with a presumption of approval - puts the burden on the agencies to act within the timeline if they have an issue or concern.
  - Inaction results in approval; it does not delay it
  - Reduces the burden on agencies because they only need to act if they have a significant concern
- **Regulatory clarity and simplification of the application process**
  - Streamlines and triages what licenses come in for intense scrutiny.
  - National security agencies will continue to be informed on all applications and will be consulted on applications especially related to new capabilities (such as commercial hyperspectral).
  - State Department’s Office of the Legal Advisor will inform the Department of Commerce as to whether any license grant would violate an international obligation of the United States and if so, what that is.
- **Single agency accountability**
  - Empowers focused decision making at a high level consistent with a quickly growing, nationally critical industry.
  - Elevating commercial remote sensing to an office run by an Assistant Secretary will give the department a stronger, dedicated advocate in the interagency process.
- **Limit on regulatory creep**
  - Reduces incentives for regulatory creep by being explicit about the data that can be used in making license determinations, by eliminating the requirement for licensees to seek approval for foreign sales agreements, and by prohibiting retroactive license modifications.
  - Sets limits on the previous “blank check” that was available to the interagency community for opposing a licensed system

Clarifications needed

- How will OSC develop the needed capabilities? Should CRSSRA move to OSC? How much should OSC's budget be? Would there be a period of transition while details are worked out?
- Do companies doing remote sensing need to register twice for mission authorization? Will there be a dual path review inside OSC when a company wants to pursue remote sensing licensing (a review as outlined by Section 801 and Section 802)?
- Many portions of section 801 and 802 are hard to interpret from the point of view of small satellite operations. For example, would all the sections on reporting on space objects throughout section 801 be applicable to every satellite in a large constellation of small satellites?
- How are the "de minimus" exceptions to be implemented?