

ESOA response to Ofcom consultations on changes to the Procedures for the Management of Satellite Filings

Introduction

ESOA (EMEA Satellite Operators Association) is a leading voice of largest satellite operators and is the world's only CEO-driven association. All full members of ESOA are satellite operators and in addition brings together companies who are not themselves operators but who engage in satellite-related activities.

ESOA welcomes Ofcom's consultation on the Procedures for the management of satellite filings, and would like to provide responses to the issues raised.

ESOA is a non-profit membership organisation dedicated to serving and promoting the common interests of satellite operators from Europe, the Middle East, Africa and the CIS. The Association today represents the interests of satellite operators who deliver information communication services across the globe. Together ESOA Members provide invaluable communications services to the whole world, including live broadcasting, emergency communications, maritime and aero communications, secure services for governments, 24/7 monitoring of industrial processes such as energy plants, weather forecasting and a whole range of other communications services.

Responses to the questions raised in the Consultation document ('Consultation') are offered below.

Question 1) Do you have any comments on our proposals to
- include additional milestones to provide evidence that the satellite project is on-going and that its frequency assignments will be brought into use within the seven year regulatory period;
- clarify what evidence we will accept to demonstrate milestones have been completed, and
- set specific deadlines for milestones?

Do you have any comments on how these changes are worded in the proposed revised Procedures?

ESOA believes that there is a need for further clarity, especially to explain Ofcom's intent. Many clauses of the Procedures do not provide for sufficient clarity to enable their correct interpretation. We suggest that Ofcom either provides the requested clarity including definitions where appropriate and/or provides explanatory notes to accompany these Procedures. We have identified below specific clauses where they would benefit from further expansion in such explanatory notes. In general, we do not see the need for any further milestones and deadlines. Such additional milestones will provide no further certainty that a project is progressing than do the current procedures.

Resolution 49 of the Radio Regulations requires that Ofcom provide the ITU Radiocommunication Bureau due diligence information relating to the spacecraft manufacturer and 'delivery window', and the launch services provider and 'launch window'. This requirement along with Ofcom's current procedures which require an operator to provide evidence of the financial ability to meet the costs of construction and launch of their proposed satellite(s) are sufficient. Any further paper work will only add a bureaucratic burden on both Ofcom and the operator.

By diligently implementing the existing procedures, Ofcom can satisfy its responsibilities under the Communications Act and those placed on it by the Secretary of State, as well as the international obligations. Such an approach would enable it to determine whether satellite projects are progressing in line with their business plans and within their regulatory deadlines. Further milestone requirements are redundant, risk existing and future investment in the satellite and supporting industries in the UK, provide

no further certainty to operators, and will add to the administrative burden on Ofcom and operators choosing to file their networks through the UK.

In general, we do not see much deficiency on the current Ofcom procedure and therefore any changes should be minimal and solely intended to streamline the current Procedures and underlying compliance obligations in line with Ofcom's stated objectives (see Section 4.5.3 of the Consultation)

Stage 1: Deliverable 1:

We recognise the need to have such information (i.e., the minimum number of satellites needed to be deployed in the case of NGSO) made available to Ofcom. The Consultation identifies the need for such information to be delivered to Ofcom at the CR/C stage. However, "Mark-up" version shows the requirement at the API stage. This should be corrected by moving this requirement to the CR/C stage.

It is important for Ofcom to recognise that changes to the satellite system, whether for a NGSO or GSO system, will be communicated via regular discussions (for example Due Diligence submissions) with Ofcom. Ofcom, when considering the Notification/bringing into use of such systems, should take into account the up to date information provided to Ofcom, and not only the information provided with the API or the CR/C submissions. This comment also applies to the Section 7.16 (BIU) of the Procedures.

Stage 2: Deliverable 2:

The current practice applied by Ofcom is to seek a revision to the business plan (to the business plan originally submitted at the API stage) to indicate any changes considered to the project at the CR/C stage. If there are no changes to the project then the original business plan submitted at the API stage is maintained. This practice should be continued. The business plan should be considered to be the primary document associated with the project and supplemented as necessary additional report issued to record various stages of to the project, unless specific requirements call for a separate report. This will allow Ofcom as well as the satellite operator to maintain clear records of the project. Further it will remove the need for "letters" (Ofcom requirement "... *if no modifications were made, a letter confirming that the deliverables submitted at Stage 1 are still valid*") thus avoiding the bureaucratic burden on both Ofcom and the operator.

We therefore suggest the deliverable 2 of stage 2 should be amended accordingly.

Stage 3.1: Deliverable - Milestones 1, 2, 3 and 4:

These are for the delivery of "evidence" showing the achievement of specific milestones of the satellite project within Ofcom stated deadlines. We believe if Ofcom is to set such "deadlines" to these milestones they should be done with a clear recognition of various factors affecting such activities relating to these milestones (of a satellite project). We discuss below some cases where these milestones may not be achieved by the deadlines stated by Ofcom. For these reasons the applicant should be provided with flexibility to offer evidence that these milestones can be met and will be met within the regulatory period of the filing and not necessarily at specific deadlines stated by Ofcom.

While some applicants will have the satellite construction contract concluded at or well before 36 months prior to the expiry of the filing (deadline suggested by Ofcom), others may delay the conclusion of such contracts, for example, until about 24 - 30 months prior to the expiry of the filing. One of the reasons for delaying the conclusion of a construction contract could be the uncertainty associated with access to the GSO orbital position and associated frequencies. There could be instances where an applicant is continuing to monitor the developments associated with a filing ahead of his/her filing, with a view to go ahead with the project if the other filing expires. In such cases an applicant may decide to go ahead with the project knowing that in some cases satellites could be constructed, launched and operations commenced within the 24 - 30 months.

The above is a general narrative to illustrate the point. However, what it illustrates is the importance of maintaining discussions between the applicant and Ofcom to inform Ofcom of the progress being made to allow for the deployment of a satellite within the regulatory deadline of the filing. It should be noted that access to spectrum for satellite services is governed through a process with many inherent uncertainties and most industry players cannot risk investments running into £200 million or more until such uncertainty is minimised to an acceptable level.

We believe this item within the Procedures merits further expansion in an "explanatory note" to the Procedures.

The addition of a critical design review (CDR) milestone is unnecessary, and will not provide Ofcom with any additional information not already captured in the existing due diligence and reporting requirements.

It is important to note in this context that complete CDR information is not always available to UK operators from the manufacturer because of export control limitations.

Stage 3.1: Deliverable - Milestone 4:

In addition to the above, we wish to offer the following specific comment on Milestone 4.

While we believe that the "Earth station " refers to feeder-link and telemetry, tracking and command (TT&C) stations and not user terminals, similarly to the meaning attributed to Milestone 5 (also discussed in the Consultation), this is not clear from the milestone's wording. The proposed new milestones relating to Earth station contracts and authorisations for earth station feeder links and TT&C communications will not provide Ofcom with any additional information not captured in the existing due diligence and reporting requirements, and are not relevant to the procedures for management of ITU satellite filings.

Stage 3.1: Deliverable - Milestone 5

While these authorisations are essential for the deployment of a satellite network we do not believe that evidence on such deployments would add more substance to fundamental aim of due diligence (those espoused by Resolution 49 also see Section 4.2 of the Consultation). Ofcom should recognise that all operators /applicants are required to comply with relevant national regulations when operating any element of the satellite network/system. There is no evidence to suggest that there had been any difficulty with non-compliance with national regulations. All other milestones (1 to 4) would provide Ofcom with information on the satellite project to assure Ofcom, without a doubt, on the level of progress being made on the project. Providing information to Ofcom on licences issued by other administrations for Earth stations would amount to an additional burden placed on the UK operators contrary to Ofcom's objectives stated in Section 4.5.3 of the consultation "*.....*", *We propose to simplify and clarify the reporting requirements in the Procedures by reducing reporting requirements before BIU*) and without offering any more tangible benefit to Ofcom for its purpose of effecting due diligence. Collecting such information would be more of a bureaucratic burden on Ofcom. Additionally, Ofcom has not offered any justification for seeking this information (see 3rd bullet under Section 4.7 of the

Consultation) and the impact assessment does not provide any specific assessment other than vague general narrative.

We respectfully suggest that this Milestone 5 be removed from Due Diligence requirements.

Section 5.z:

The third paragraph states "*If the applicant will not meet the relevant milestone by this extended deadline then Ofcom may consider whether it would be appropriate to cancel the filing.*"

The "*this extended deadline*" stated above may be a reference to the possibility of agreeing with Ofcom an extension to the deadlines prior agreed with Ofcom. Therefore this should be clarified.

Question 2) Do you have any comments on our proposals to clarify the information required when there is a change to the business plan?

Do you have any comments on how these changes are worded in the proposed revised Procedures?

We believe that the information required to be submitted when there is a change to the business plan would be no different to that called by the current procedures. Operators offer revised business plans to describe changes to the project and consequential impact on the milestones. These changes are then agreed at due diligence discussions. Any changes to the filings required, although such changes are only considered as a last resort because of the likely impact on the date of receipt, are usually handled in discussion with Ofcom. For these reasons we do not expect any significant change in Ofcom's approach to the Procedures. We request Ofcom to clarify this position.

Ofcom's existing procedures already require that operators immediately communicate to Ofcom any changes to the business plan, including the key milestones, progress reports for each satellite network indicating any variations from the previously-submitted business plan and details of their coordination progress and status. It is not clear what problem Ofcom's proposed changes are trying to solve.

The existing reporting requirements are more than sufficient to allow Ofcom to judge whether a change to the business plan impacts on an operator's ability to implement the plan in line with the technical parameters outlined in the relevant satellite network filing, and within the regulatory deadline.

Separately, Ofcom's existing procedures already place upon operators substantial due diligence requirements relating to, among other things, satellite construction, launch and coordination. Given the significant capital and operational expenditure borne by the operators to satisfy these requirements, operators are best placed to determine the regulatory and operational consequences of any change to the business plan.

We have commented on various changes to Section 5 under Question 1 above. The addition of paragraph 5.y is generally acceptable.

Question 3) Do you have any comments on our proposed changes to the reporting requirements illustrated in paragraphs 4.18 – 4.25 above?

Do you have any comments on how these changes are worded in the proposed revised Procedures?

The changes made concerning yearly reporting requirements are generally welcome. Changing reporting requirement for networks before BIU to yearly reports would ease the burden on operators. Also the consolidation of reports on all operational satellites would also assist operators.

The information required for reporting on a satellite network that has been brought into use include:

(see paragraph 4.24 of the Consultation or Section 5.9 of the "marked-up")

- *services being offered on each transponder, highlighting and explaining any activity changes over the year;*
- *the frequency bands used by each satellite beam and its geographical coverage*

With operational satellites having a large number of transponders, commercially sensitive, confidential and complex arrangements to use available frequencies within the service area, this requirement would place a huge burden on operators with no clear regulatory purpose or benefit towards Ofcom's responsibilities. It is noted that the regulatory requirement is to ensure that notified frequencies are being utilised effectively and not to seek detailed arrangements on frequency use. Sometimes commercial arrangements will require continuing changes to the use of frequencies, use of transponders, etc. Operator's resources spent on documenting such varying commercial uses of frequencies, coupled with the need to provide necessary explanations, cannot be justified, as the requirement does not relate to main objectives of Ofcom. We therefore suggest that the two bullet points should be changed to read as follows:

- provide information on the use of notified frequencies by the satellite

With regard to the proposed content of the annual reports for the first and subsequent years after being brought into use, in addition to the points made above, we consider that the new proposals are unnecessary. We understand that the purpose of the change is to provide Ofcom with evidence that the system is still operating in accordance with the corresponding ITU filing(s). Ofcom's existing procedures already require operators to provide annual reports covering the assignment(s) in the Master International Frequency Register (MIFR). We therefore again consider that Ofcom can fulfil reporting obligations to the ITU by diligently enforcing their existing procedures without the need to mandate the specific content of operators' annual reports. Such an approach would be unnecessarily burdensome on Ofcom and the operators, and some of the content proposed by Ofcom (including the services being offered on each transponder, information relating to the ground segment, and the operators annual report and financial statements) is not relevant to the status of operational satellite filings and therefore redundant in this context.

Question 5) Do you have any comments on our proposal to clarify the Procedures to set out that we may, at our discretion, allow UK satellite networks with junior filings to be notified to the ITU without requiring completion of all frequency coordination with UK networks having senior filings, and the conditions on which we would proceed with notification in such cases?

Do you have any comments on how these changes are worded in the proposed revised Procedures?

Extending a procedure similar to No 11.41 to the UK networks is acceptable. We therefore support Ofcom's proposal that notification could be made, provided that the applicant with the junior filing has satisfied Ofcom's new procedures as follows:

- has attempted to achieve coordination with the UK network(s) having senior filings;
- commits to operate its satellite on a non-interference and non-protection (NINP) basis with respect to the senior filing(s) with which it has not been able to complete coordination;
- commits to satisfactorily remove any harmful interference, during its operations, which may be caused to assignments in operation on networks with senior filings that it has not been able to complete coordination with; and, acknowledges that if harmful interference is caused to such assignments and it fails to remove harmful interference satisfactorily, then the sections of the procedures related to the possible cancellation of the filing due to harmful interference being caused (section 12.10 or 13.10, as appropriate) would apply.

The changes worded in paragraphs 6.xxx and amended 6.4 are satisfactory in principle. Separately, footnotes 4 and 5 relating to Paragraph 5.9 of the consultation document are unclear and inaccurate. Ofcom states: "By 'senior filing' we mean a filing of a satellite network whose API date of receipt precedes that of a filing of another satellite network. The senior filing has priority over the more recent (or 'junior') ones." Filing priority is given by the coordination request (CR/C) date and not the date of receipt of an API.

Question 6) Do you have any comments on our proposal to change the text of the Procedures to clarify that, in order to make the declaration of bringing into use for GSO networks, we may require a range of information from the operator, including that set out in CR/343?

Do you have any comments on how these changes are worded in the proposed revised Procedures?

We recognise Ofcom's obligation to declare to the ITU that a satellite network filing has been brought into use in line with Article 11.44B by the launch of a new satellite or the redeployment of an existing satellite to the orbital location to which the declaration relates, however, we do not consider that there is a need to amend the existing procedures to meet this obligation.

Ofcom's existing procedures mandate that the operators immediately inform Ofcom of any changes to the business plan which impact on the systems capabilities to operate under the technical umbrella described by the CR/C filing. We therefore do not consider that there is any requirement for Ofcom's proposed changes to the procedures.

Separately, we consider that satellite transponder lease contracts are irrelevant to a satellite's capability of transmitting and receiving a particular frequency assignment.

We also bring to Ofcom's attention that *CR/343* is not widely accepted by Administrations and Ofcom should not take this circular letter as an approved document.

The information required to BIU is set out in Stage 3.3 of the Procedure. While our contention is to limit information required from operators for the BIU to those placed on Ofcom under international obligations (such as the Radio Regulations), we offer the following comments for completeness. :

Stage 3.3:

Leading paragraph in Section 3.3 stipulates with the words "*shall be provided*" that the list of items produced in bullet points below are mandatory submissions. In contrast the Circular Letter CR/343, which is the origin of the concept, states "*might be requested*". It appears that in contrast to the objectives set out in the consultation, the revisions to the Procedure proposed by this consultation, perhaps unwittingly, result in significantly more bureaucratic burden on both the operators and Ofcom than those envisaged by the ITU.

Stage 3.3: Deliverables - 4th bullet:

- *the satellite network operator's licence application to the administration;*

While some other administrations offer "licences" for the operation of the network using frequency assignments acquired with a filing made nationally - the Wireless Telegraphy act does not provide for such licensing for the UK operators and consequently the inclusion of this requirement is inconsequential and may cause unnecessary administrative confusion. It is therefore proposed the removal of this requirement from Due Diligence.

We suggest that if Ofcom is to include any additional items within its due diligence requirements, then Ofcom provides a necessary explanation, in addition to a reference to the Circular letter CR/343, in the said explanatory note to the Procedures.

Question 7) Do you have any comments on our proposals that, for non-GSO systems, operators are asked to indicate, at CR/C stage, the minimum number of satellites needed to be deployed in order to provide the intended service to at least the declared minimum quality of service, and that this information (i.e., the minimum number of launched satellites) is used to verify that the system has been brought into use?

Do you have any comments on how these changes are worded in the proposed revised Procedures?

The paragraph 6.9 of the Consultation states that specific information on the NGSO system will be sought at the CR/C stage. It appears that these proposals have not been correctly transposed to the Marked-Up version. In the Marked-Up version these requirements are placed on the NGSO systems at the API stage. We have commented on this under Question 1. These requirements need to be moved to the CR/C stage.

Question 8) Do you have any comments on our proposal to include provisions in the Procedures for the transfer of an application at API stage, subject to certain conditions being met?

Do you have any comments on how these changes are worded in the proposed revised Procedures?

This arrangement for APIs, which complements the existing arrangements, is a satisfactory one to be included in the Procedures.

Question 9) Do you have any comments on our proposals to set out the requirements on operators and the consequent actions that we may take in cases where assignments are no longer in use?

Do you have any comments on how these changes are worded in the proposed revised Procedures?

This arrangement will assist in dealing with situations as described in the Consultation. However, cancellation of assignments in the case of a malfunction of a satellite should not be considered unless the operator concerned so desires. In the case of a satellite malfunction the operator should be given a reasonable opportunity to obtain a replacement satellite. If there is a requirement to extend the available regulatory period (i.e., suspension period), all options should be considered, including a possible referral to the RRB or a WRC.

Other comments.

We note that paragraph 13.10 of the Procedures inadvertently refers to a two year suspension period under No 11.49. This suspension period should be three years.