



GOVERNMENT OF BERMUDA
Ministry of Economic Development

Department of Telecommunications

Consultation on Procedures for the Management of Satellite Filings: Response of the Government of Bermuda, Ministry of Economic Development.

The Ministry of Economic Development of the Government of Bermuda welcomes the opportunity to respond to Ofcom's consultation on its proposals to amend its Procedures for the Management of Satellite Filings. The mission of the Ministry of Economic Development is to facilitate the creation of jobs and the generation of GDP. The Ministry is committed to creating an environment that is conducive to sustaining the businesses already in Bermuda and to making our island attractive so that even more businesses come and make Bermuda their home. The Ministry is also responsible for the day-to-day functions of the Minister responsible for the authorisation of satellite networks under Bermuda's domestic regulations.

General Comments

In general, we support what we understand Ofcom's intentions to be, although we doubt whether these require the substantial changes to Ofcom's procedures that it proposes and in many cases we believe that change is unnecessary, either because they are already implicit in the existing procedures and requirements, or because they have no basis in Ofcom's obligations to the International Telecommunication Union (ITU). Our most serious concern is that by making its procedures more detailed, and its requirements more prescriptive, Ofcom will make its own task more difficult, increasing workload unnecessarily, and increasing the risks of delays to filings and confusion between the role of Ofcom as the UK administration and the roles of the local authorities in the Overseas Territories and Crown Dependencies.

We also have concerns about the timing of the consultation: Ofcom states that it will make a statement in the autumn of this year, but we understand that will be just before the next ITU World Radiocommunication Conference (WRC-15), which could make changes to the Radio Regulations with substantial consequences and require Ofcom to repeat the exercise all over again.

Minor and Editorial Changes

Ofcom proposes to add new text to paragraph 2.54. We believe that it would be clearer if this text advised applicants to contact the UK Space Agency in order to find out whether they would need a licence under the Outer Space Act 1986, and provide contact details for the UK Space Agency.

The comment alongside the proposed new paragraph 5.x describes it as a minor editorial and states that it is intended to more fully explain the background and rationale for Ofcom's information requirements. We do not believe that the proposed text succeeds in this intent. If Ofcom needs the information to meet its international obligations, particularly in response to a specific request from the Bureau relating to No. 11.44B and circular letter CR/343, or No. 13.6, then it would be appropriate to say so here.

There is an anomaly in Ofcom's proposed change to paragraph 13.10, to align the text to the amendment of No. 11.49 by WRC-12. Ofcom proposes to delete one reference to the two-year suspension period, but not the second, appearing in the final sentence of paragraph 13.10. We would suggest either deleting that second reference or correcting it.

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?*

We understand that the objective of adding these additional milestones is to provide more evidence that the filing will be brought into use within the seven-year regulatory period but we do not believe that creating these additional milestones, or setting firm dates for these, are necessary. They are not necessary to enable Ofcom to meet its obligations to the ITU, and in practice may place satellite operators based in the UK, British Overseas Territories or Crown Dependencies at a competitive disadvantage.

We believe that the procedures as currently drafted, and which already require operators to provide Ofcom with a substantial amount of information, are sufficiently flexible for Ofcom to be able to implement the requirements of No. 11.44B, introduced by WRC-12, and circular letter CR/343. Increasing the requirements and setting firm deadlines risks making the procedures inflexible. One of the proposals to be considered by WRC-15 is whether the current minimum six-month interval between the Bureau receiving advance publication information and a coordination request should be maintained or not. If not, then this will require Ofcom to amend its procedures again to take account of this.

The additional requirement to provide information from the critical design review could create practical problems. It is unlikely that operators are able to share it except in extremely general terms.

By setting a deadline for the launch contract, Ofcom will place operators in the UK, British Overseas Territories and Crown Dependencies at a disadvantage and unable to hold normal commercial negotiations with launch service providers. This will also distort the functioning of the European market for launch services and for related services, and the functioning of the relationship between providers in the UK (including British Overseas Territories and Crown Dependencies) and Europe, and providers based in other international markets.

The additional requirements for construction and authorisation of an earth station do not appear necessary for Ofcom to meet its obligations to the ITU. Ofcom does not currently require, or propose to require, that earth stations used to control the satellite be located in the UK, British Overseas Territories, or the Crown Dependencies. National policies and legislation will affect whether a particular administration will license, or otherwise authorise, an earth station to communicate with a satellite which has not yet been notified, and it is not clear whether Ofcom would require the earth station to have been coordinated and notified to the ITU.

Both of these requirements, relating to launch and operation of the spacecraft, appear to imply another requirement, that the company making the filing and securing its coordination and notification, is the same company that will procure, launch and operate the spacecraft, and that the company procuring, launching and operating the spacecraft will be based in the UK, British Overseas Territories or Crown Dependencies, and will be licensable under the Outer Space Act, which is not necessarily the case.

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

Please see our comment on the proposed paragraph 5.x, above. Otherwise, we have no specific comment on the drafting.

Question 2

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

We believe that the current requirements are sufficient to enable Ofcom to meet its objectives with this requirement. We would expect that whether a change to the technical characteristics of the network as filed would require modification or a new filing would be self-evident.

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

We have no specific comment on the drafting.

Question 3

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

Overall, the proposals to change the reporting requirements go beyond what is needed for Ofcom to meet its obligations to the ITU either before the regulatory deadline/bringing into use, or afterwards. The proposal for the first yearly report appears to replicate what Ofcom should have submitted in the due diligence notification under Resolution 49, and the statistics about use, and commercial information, could present practical difficulties. Although we understand that Ofcom may be asked to provide some of this information specifically in response to a request from the Bureau, such as outlined in circular letter CR/343, it does not appear appropriate for Ofcom to require it as a matter of routine. We can see how this information, collected regularly and consistently, could be useful to Ofcom if used for other purposes, but Ofcom's proposals do not indicate clearly that Ofcom will require that information for those purposes.

From experience over many years, Ofcom has applied the existing requirements in different ways, and we have had different experiences in our own application. Some operators voluntarily give more reports through general dialogue, whereas others have had more direct communication with Ofcom. This suggests that the reporting intervals might better be varied according to the particulars of each project. We have found it useful to discuss this with operators.

We are also concerned that Ofcom's proposals will result in 'spikes' of work for operators and for local authorities in the British Overseas Territories and Crown Dependencies and our administrative preference would be for reports to be negotiable, and linked to the date of receipt by the Bureau. The proposal that operators should submit reports on all networks at once is also likely to result in excessive demands on Ofcom's time as they review the reports, particularly those of large operators, and this could have a detrimental effect on Ofcom's ability to review and submit filings, leading to Ofcom missing its target times and introducing delays for operators.

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

We have no specific comment on the drafting.

Question 4

Do you have any comments on our proposal that a request for notification under No. 11.41 must be supported by evidence of efforts to coordinate with the other operator(s)/administration(s)?

We generally agree that Ofcom should be able to provide the Bureau with evidence of efforts at coordination proving inconclusive although we would expect that through its involvement in the international coordination process and attendance at bilateral meetings, Ofcom would already have a record of these efforts.

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

We have no specific comment on the drafting.

Question 5

Do you have any comments on our proposal to clarify the Procedures to set out that we may, in 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?

This proposal is problematic as, despite promising safeguards to the senior network, it is not clear how Ofcom would enforce these, and whether different procedures would apply in the planned bands (Appendices 30, 30A and 30B) and unplanned bands. It is also not clear how Ofcom would treat two networks where the first had its API filed before the second, but the second had its coordination request filed before the first, or whether this situation would make any difference. Ofcom also does not appear to consider the international consequences on the senior network of the junior network being entered into the MIFR by the Bureau. In addition the source and scope for Ofcom's discretion are unclear, and the procedures proposed by Ofcom do not describe how it would exercise this discretion in the event that one or more of the operators of the networks involved were based in the British Overseas Territories or the Crown Dependencies. For consistency and transparency Ofcom's current approach of consulting the local authorities in the British Overseas Territories and Crown Dependencies with regard to the submission of filings in the planned bands, or in cases of interference, should be followed as a model, so that this decision is not Ofcom's alone but would be taken with the agreement of the local authority in the British Overseas Territory or Crown Dependency concerned.

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

We have no specific comment on the drafting.

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?

As we note in our response to Question 3 above, we believe that the current procedures enable Ofcom to request this information in response to such a request from the Bureau.

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

We have no specific comment on the drafting.

Question 7

Do you have any comments on our proposals that, for 11011-GSO systems, operators are asked to indicate, at CRIC 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?

The ITU does in some cases require similar information relating to the orbital characteristics but this is for coordination purposes and it is not clear what Ofcom would do with this, how it would verify bringing into use, or how this would affect notification or due diligence under Resolution 49.

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

We have no specific comment on the drafting.

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?

We have no specific comment on this proposal.

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

We have no specific comment on the drafting.

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?

We believe that while in practice it may be appropriate for Ofcom to be informed as soon as possible that an anomaly has occurred, this is not the same as informing Ofcom immediately; nor is it practical to expect an operator to produce a rectification plan immediately, as the anomaly will need investigation. We also note that in the event of an assignment being suspended, Ofcom has six months in which to inform the Bureau, and request recording of the suspension if it will last longer than six months.

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

We have no specific comment on the drafting.