

Intelsat Response to Ofcom's Consultation on Proposed Changes to Procedures for the Management of Satellite Filings

10 July 2015

I. Introduction

Intelsat Global Sales & Marketing Limited ("IGSML"), a company incorporated under the laws of England and Wales (Company Number: 04098445) and a subsidiary of Intelsat S.A. (collectively referred to as "Intelsat"), welcomes the opportunity to provide comments to Ofcom's consultation on the procedures for the management of satellite filings. Intelsat applauds Ofcom's approach in preparing the proposed amendments in that they attempt to identify changes an operator may welcome, and information an operator may readily have available to provide to Ofcom. While it is apparent that Ofcom's proposed changes to the existing procedures are well intended, Intelsat believes that a number of proposals are inconsistent with Ofcom's best practices, including its light touch and pro-business regulation best practices.

Specifically, Intelsat considers that the majority of proposed changes to Ofcom's procedures are unnecessary, and we request that Ofcom instead identify its obligations to the ITU and consult with operators to establish what information they can provide to ensure that Ofcom can meet those obligations. The prescriptive nature of Ofcom's proposed changes and the information it proposes to seek from satellite operators is not appropriate, and Ofcom can more efficiently undertake its duties by working with individual operators under a broader, and more flexible framework, such as those described by the current procedures.

II. Shareholder Workshop

Intelsat attended Ofcom's stakeholder workshop to discuss the consultation on 10th June, at Riverside House. During the workshop three important issues were raised about which Intelsat requests further clarification from Ofcom.

A. Timing

As Ofcom is aware, the outcome of the 2015 World Radio Conference ("WRC-15") in November may have major consequential impact on many of Ofcom's proposals in this consultation. One such example is the discussion of the treatment of advanced publication information ("API") under Agenda Item 7, as highlighted in the CPM Report.¹ It is Intelsat's impression that both Ofcom and the satellite industry will be better served by delaying any proposals that could be affected by decisions made at WRC-15 until after the conclusion of the conference.

¹ See Report of the CPM on operational and regulatory/procedural matters to the World Radiocommunications Conference 2015, Chapter 5, April 2015, available at <http://www.itu.int/md/R12-CPM15.02-R-0001/en>.

B. Status of the Proposed Procedures

Numerous times during the workshop Ofcom stressed that the proposed amendments to its procedures in this consultation were "guidelines." However, the text of the consultation, as drafted, is prescriptive. Treating the proposed amendments as guidelines would be of benefit to all parties and would be consistent with Ofcom's best practices. In line with Ofcom's statements in the workshop, Intelsat requests that Ofcom revise the consultation, and include in the final document text that unambiguously indicates the guidelines status of these procedures. If the consultation is intended to contain a combination of proposed guidelines and binding rules, Ofcom should revise the consultation and allow for further comments given the impact such a clarification would have.

C. Confidentiality

Participants at the workshop raised the issue of confidentiality. Many of the proposed information requests by Ofcom in this consultation, such as disclosure of highly technical materials during the milestone review process, are of a highly confidential and commercially sensitive nature. If Ofcom determines it must collect such information, it should provide confidential treatment for all sensitive commercial, technical, and financial information, as such information could be used by competitors to the detriment of the filing party. Substantial competition exists in the telecommunications satellite industry and the presence of competitors makes imperative the confidential treatment of sensitive commercial information. In addition, some material, originating from United States ("U.S.") satellite manufacturers or other companies, may also contain an International Traffic in Arms Regulations ("ITAR") warning to prevent unauthorized disclosure to foreign persons. Ofcom's proposals do not address this issue.

III. Milestones

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?

Contrary to Ofcom's conclusion in its impact assessment, proposed additional milestones and evidence requirements would not provide operators with additional clarity or certainty. In addition, the proposed milestones will not aid Ofcom in fulfilling its obligation to the ITU and are contrary to Ofcom's stated goal of simplifying and streamlining. The proposed milestones will unnecessarily complicate the milestone process by increasing the administrative burden for both Ofcom and operators and increase the regulatory uncertainty operators face.

Ofcom should consider the impact of a more burdensome, lengthy, and costly process on United Kingdom ("UK") licensees, given that the UK regulatory regime is in effect competing against other countries' regulatory systems. It is important to note that in its recent proceeding to streamline satellite regulatory requirements, the U.S. Federal Communications Commission ("FCC") has proposed to reduce milestone requirements.² It is Intelsat's opinion that Ofcom's proposals as expressed in the consultation will put operators filing through the UK at a competitive disadvantage and disincentivize operators from filing through the UK.

A. Satellite Construction Contract

Ofcom's proposed requirement to provide evidence of a satellite construction contract or a letter of commitment confirming that an appropriate in-orbit satellite will be placed in the given orbital location before the expiry of the filing's seven year regulatory limit effectively reduces the ITU seven year period. This requirement is unnecessarily burdensome on UK operators' as spacecraft manufacturers commonly quote delivery schedules less than thirty-six months, and on-orbit resources can be found in much shorter timeframes. Complicating matters, a satellite construction contract, even if supplied, may not provide Ofcom with satellite specific information as some launch contracts do not describe a specific satellite until late in the process to allow for the launch order to be changed. Furthermore, as expressed by Ofcom during its workshop, the term "letter of commitment" should be revised to "letter of intent."

B. Critical Design Review

With regards to Ofcom fulfilling its obligations to the ITU, the proposed Critical Design Review ("CDR") milestone is unnecessary. Operators following Ofcom's current procedures already provide sufficient information to Ofcom in response to its current procedures to satisfy Resolution 49 (WRC-12) requirements.

Contrary to Ofcom's goal of streamlining and simplifying its procedures, requiring a CDR submission adds an unnecessary burden on UK operators and Ofcom. CDR reports are typically voluminous and monitoring of this milestone would necessitate a time-consuming review by Ofcom staff that could impede progress of the operator's project. This additional burden will result in inefficient use of both operators' and Ofcom's resources.

As covered *supra*, Ofcom should also consider the highly confidential and proprietary information, including trade secrets, contained within CDR materials. Carefully guarding the confidentiality of CDR reports is critically important to both manufacturers and licensees. In addition, CDR materials may contain "Technical Data" as defined under the ITAR and, as such, could not be exported, disclosed, or otherwise transferred to any "Foreign Person" as defined under the ITAR (22 C.F.R. §120.16) without the prior written authorization of the U.S. Government.

² See Federal Communications Commission, In the Matter of Comprehensive Review of Licensing and Operational Rules for Satellite Services, IB Docket No. 12-267, Sept. 30, 2014.

Intelsat's assessment is that if Ofcom chooses to require confirmation of the frequencies supported by the satellite payload, it should do in another manner. A copy of the CDR is not necessary to meet this purpose, and instead we suggest a certification of the frequencies supported by the operator or satellite manufacturer should suffice. Furthermore, where the CR/C information lists frequencies that are not considered by the certification, Ofcom should not cancel a portion of the filing and should instead maintain the filing until the regulatory deadline. This would allow operators the continued flexibility needed for their procurement plans and coordination activity. For example, should it be necessary to complete the construction of a satellite without one or more of the bands identified as required in the original business plan, it may be possible for an operator to move an on-orbit satellite to the location to achieve the coverage intended in the original business plan.

C. Earth Station Procurement Contract Milestone

It is Intelsat's understanding, following the stakeholder workshop, that the earth station procurement contract proposed milestone relates only to TT&C and/or MSS feeder link earth stations. Ofcom should clarify this point in any follow-up or final documents.

D. Earth Station Feeder-links and TT&C Communications Milestone

The addition of an earth station feeder-link and TT&C communication milestone would be burdensome to operators and create uncertainty because this information may not be readily available. In some cases this milestone might even create a "catch-22" situation as some administrations require a spacecraft license, or for the relevant frequency assignment to be notified to the ITU *before* they will process an earth station license and for feeder links. This difficulty in meeting the proposed milestone could result in significant delays to an operator and, according to Ofcom's proposals, potentially jeopardize the filing. As such, Intelsat encourages Ofcom to refrain from adopting an earth station feeder-link and TT&C communication milestone.

IV. Business Plan

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?

Intelsat has no comment at this time.

V. Reporting Requirements

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?

While Intelsat appreciates Ofcom's proposed reduction in reporting from biannually to annually, Intelsat believes that the proposed additions to the reporting requirement are excessive in relation to Ofcom's obligations to the ITU. The proposed additions are unnecessarily granular and overly burdensome, often requiring disclosure of highly commercially sensitive information that may be difficult to extract or redact. The implementation of such an invasive regulatory requirement will create inefficiencies and regulatory uncertainties that will ultimately harm customers. Intelsat also believes that the proposed new procedures will require that Ofcom substantially expand the scope of their Satellite and Space Science team, which would have greater impacts than that covered in its impact assessment.

In particular, Intelsat notes the following in relation to the following specific proposals.

A. Business Plan

Ofcom proposes in Section 4, paragraph 19 that operators:

[P]rovide immediate reports of changes to the business plan and milestones (paragraph 5.5 of the Procedures) to include reports of any events which cause a material change to the project plan (before BIU) or the operational status of the filing (after BIU), and as soon as practicable when milestones are completed (before BIU)[.]

As written, it is not clear to Intelsat the objective of this new requirement. If the purpose is to provide Ofcom with evidence that a licensee is operating in accordance with the ITU filing, we believe the information already reported to Ofcom is sufficient to satisfy this requirement. Intelsat urges Ofcom to require only to be informed of changes to the business plan regarding how frequency assignments relating to a particular satellite are planned to be used/are used. The language "to include reports of any events" should be deleted, as it is overly broad.

Also, as mentioned above, Ofcom and operators are required to bring the frequencies in their filings into use within the seven year regulatory deadline. Intelsat therefore considers it necessary to limit the reporting scope in relation to Ofcom's existing milestones, and to remove the requirement for the proposed additional milestones for the reasons described in our response to Question 1, *supra*. Intelsat stresses that flexibility within the seven year regulatory period is essential.

B. Before BIU

In Section 4, paragraph 22, Ofcom proposes:

Before a filing has been brought into use, we would ask applicants to include in the yearly report:

- ...
information about any changes or updates to the applicant's business plan[.]

Intelsat requests that Ofcom reconsider this addition or, as an alternative, make the addition voluntary and limit the requirement only to changes that affect the use of frequency assignments relating to a particular satellite. Updating changes to the business plan will be extremely onerous – both because of the changing nature of business plans and because the internal staff working on spectrum issues may or may not have insight into many aspects of business plans, particularly those elements that do not specifically pertain to spectrum use. Flexibility is necessary to allow operators to respond to changing business needs and demands. Proposals such as this, which limit or burden an operator's flexibility, could cause unintended consequences such as a decrease in satellite investment in the UK.

C. First Yearly Report

Ofcom proposes in Section 4, paragraph 23:

For the first yearly report after a new satellite network has been brought into use, we would require the operator to include the following:

- ...
what operational or testing activities have been undertaken to show that the satellite is capable of operating on the frequencies notified or brought into use.

In Intelsat's opinion, Ofcom's proposal to require the disclosure of operation and testing activities is problematic. The sheer volume of this material would create an unnecessary administrative and cost burden on both Ofcom and operators. Moreover, Ofcom is already requesting information about the applicable satellite being in operation, so this requirement is redundant. If Ofcom nevertheless believes it is necessary to have operators provide additional proof of a satellite's operating capabilities, Intelsat suggests Ofcom require only a brief statement/letter or certification for new satellites stating that in-orbit testing has been completed and identify the frequencies on the satellite.

D. Yearly Reports

In Section 4, paragraph 24 Ofcom proposes:

For every yearly report (including the first report after a filing has been brought into use) we would require the report to include:

- information about the operational health and status of the spacecraft in orbit;
- 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;
- information related to the ground segment that demonstrates that the satellite network can operate according to its design and mission. This may include the location, characteristics and coordination status of its Earth Stations, and the location and point of contact of its Network Control Facility;
- whether any issues (operational or interference) have been experienced by the payload; and
- a copy of the company's Annual Report and Financial Statements.

Intelsat has concerns about the subjective nature of reviewing the type of information requested in the first item. There are many types of issues that may occur over the course of a satellite's life that do not affect service, safety, or ability to de-orbit a satellite. Given Ofcom's regulatory role and the extremely sensitive nature of this information, any reporting requirements relating to the operational health of the satellite should be limited to those which preclude the use of a frequency assignment and should be strictly confidential.

In relation to the second item, transponder loading, usage can change frequently, and fleet management flexibility is necessary to maximize commercial flexibility and performance. Because of the ever-changing nature of this data, information provided in an annual report could be quickly out-of-date. Furthermore, it is unclear to Intelsat how services being offered relate to the use of the frequency assignment, as the requirement to ensure conformance with ITU regulations is that the emissions are compliant with those listed in the groups of the associated CR/C or Notification where the service is not a factor.

The third item would be more efficiently addressed by requesting that Ofcom is informed of changes to frequency bands used for each beam. Generally, beam frequency use remains fixed for the life of the satellite and a management-by-exception approach would save time and resources for both Ofcom and operators. For geographic coverage, the same comment applies; while changes to beam pointing of steerable beams may remain fixed for long periods, there are also instances where steerable beams are moved frequently according to customer needs and reporting of this type of operation does not fit neatly within the proposal.

The fourth item, ground segment information, again is not practical for operators to provide for reasons described above. Collection of this information would burden operators' resources, and the data collected would likely be out-of-date and/or inaccurate by the time of submission. However, the location of the Network Control Facility is a reasonable request that is easy to provide, although it is unclear what Ofcom's reasoning is for proposing this requirement.

With regard to the fifth item, interference, it is Intelsat's experience that satellites experience interference on a regular basis. We believe that any incidents not escalated to an administration can be resolved by and between operators, and there is no need to burden Ofcom with this information and additional workload. Serious cases of problematic interference are already escalated to the ITU through Ofcom.

The final item, financial disclosure, was addressed at the workshop. Ofcom stated that this additional layer of information was designed to obtain evidence of an operator's financial viability/credibility, and that the evidence listed in the consultation is not mandatory. Financial information is highly confidential and commercial sensitive. Accordingly, Ofcom should state the voluntary nature of the disclosure, clarify the purpose of this requirement, and disclose the standard under which the financial information will be evaluated. Satellite operators are often the subject of complex corporate structures, and therefore the financial statement of the operator may give no insight into its ability to finance the build, launch, and operation of a specific satellite or fleet of satellites. For large established operators, with a track record of deploying satellites to bring into use and maintain frequency assignments in multiple orbital slots, upon which their business and that of many of their customers relies, it would be unthinkable to accept a condition that "Ofcom may consider whether it would be appropriate to cancel the filing" if such operator were to miss the deadline to deliver an annual report to Ofcom.

VI. Notification Where International Coordination Has Not Been Completed

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

Intelsat requests that Ofcom clarify what it would consider as "sufficient evidence that coordination efforts have been made and have not been successful in reaching an agreement."

VII. Notification Where Coordination between UK Operators Has Not Been Completed

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?

Intelsat is generally supportive of Ofcom's proposal regarding procedures for notification where coordination between UK operators has not been completed.

In a related matter, in the planned bands, Intelsat notes that the submission of the junior filing will have a detrimental impact on more senior filings as the reference C/I will be updated for all systems in the Plan. Accordingly, we can only support this proposal for the planned bands if Ofcom can demonstrate that technical compatibility can be achieved prior to submission of the junior filing to the ITU.

VIII. BUI – GSO Satellite Networks

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?

Intelsat opposes Ofcom's proposals related to the declaration of bringing into use for GSO networks as there is no need for Ofcom to amend its current procedures in order to fulfill its obligations to the ITU under Article 11.44B. Also, in addition to reservations about the potential volume of information Ofcom is proposing to potentially request, Intelsat has serious concerns about the confidential and commercially sensitive nature of some of the information that Ofcom may request.

Separately, during Ofcom's stakeholder workshop Ofcom agreed it did not require full results of IOT and appeared to agree that only confirmation of the technical characteristics of the satellite that are relevant to the ITU filing would be needed. Ofcom suggested that a signed letter from the company confirming this information might suffice. Ofcom should reiterate this clarification in writing.

As there appears to be uncertainty on what information Ofcom may require, Intelsat requests that Ofcom clarify its expectations with operators prior to implementing any changes to the existing procedures.

IX. BUI – NGSO Satellite Networks

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?

Intelsat supports Ofcom's proposals requiring non-GSO operators to indicate, at CR/C stage, the number of satellites needed to be deployed in order to provide the intended service.

X. Transfers of Ownership and Control

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?

Intelsat supports Ofcom's proposal to include provisions in the Procedures for the transfer of an application at API stage, subject to certain conditions being met. Intelsat has no comments on Ofcom's proposed wording.

XI. Suspension of Assignments

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?

Intelsat is generally supportive of Ofcom's proposal. However, we urge Ofcom to consider, at a minimum, 30 days, and ideally 90 days, rather than the proposed immediate time frame, as a more appropriate period for an operator to inform Ofcom of the relocation or loss of satellite capability, along with their plans identifying how and when the situation could be remedied (in the case of an anomaly), or how and when operation of the assignments is to be continued thereafter (in the case of a relocation). It takes operators time to understand anomalies, often involving interaction with the satellite manufacturer. Developing plans to relocate satellites may require a complex redistribution of satellites within the fleet. The longer period would provide sufficient time for operators to fully analyze, respond, and identify solutions to anomalies in all cases, and it would ensure that the report to Ofcom would be laced with fewer caveats and speculative statements and provide a more qualitative instrument for Ofcom's evaluation.