



Cesar Gutierrez  
Spectrum Policy Group – Market Enhancements Team  
Riverside House  
2A Southwark Bridge Road  
London SE1 9HA  
[cesar.gutierrez@ofcom.org.uk](mailto:cesar.gutierrez@ofcom.org.uk)

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Dear Mr Gutierrez,

ESOA (together with SAP Reg) already responded to the initial Ofcom consultation on the introduction of Recognised Spectrum Access (RSA) in 3400-3600 MHz for Crown services, in September 2009. At that time, we raised concerns about the proposed interpretation of the EC decision 2008/411/EC on the introduction of BWA in 3400-3800 MHz which we could read in the consultation document.

We understand that with this new consultation on their statement and statutory notice related to this RSA, Ofcom now intends to put in place the necessary regulations in order for the MoD to apply for RSA in those bands, and thus be able to release the bands to the market.

Without taking position on the RSA instrument itself, ESOA took good note of the following text (page 21 of the consultation document – as ESOA underlined):

#### **Clarifications on satellite use**

4.69 The satellite community requested clarification on certain statements that we made in our Consultation that affect satellite use, in particular the interpretation that we have made of certain articles of the Commission Decision. Whilst we understand that the satellite community is seeking a steer from us in respect of the whole 3400 to 3800 MHz range, we note that the 3600 to 3800 MHz band – which does have authorised satellite use in the UK – is out of the scope of this Statement and that it continues to be open for Permanent Earth Station licence applications.

4.70 As far as the 3400 to 3600 MHz band is concerned, this is not a satellite band in the UK. There are no satellite stations licensed to operate in the band, Ofcom does not have a licence product for such use, and the UKFAT does not show this band as allocated to satellite. We do not have the intention to introduce satellite use in the future. Therefore, Fixed Satellite Services (FSS) do not currently constitute an “existing use” in the band that, according to the Commission Decision, should be protected.

4.71 Satellite stakeholders also asked Ofcom to explain how it will ensure protection of FSS when it is adjacent to a broadband wireless network. It is also requested that the co-ordination procedure continues to be specified, including with earth stations located outside of the UK.

4.72 Terrestrial and satellite services have successfully shared the 3600 – 3800 MHz block both in the UK and internationally for decades. In the UK, Ofcom requires coordination between these two services on a “first come, first served” basis. This means that we review all requests for new BWA stations or new FSS earth stations, and authorise them only if certain coordination requirements vis-à-vis the other service are met. We think that this coordination procedure ensures protection of FSS from BWA stations across the band.

4.73 Secondly, protection of FSS stations in the 3600 - 3800 MHz range from BWA in the 3400 – 3600 MHz would be ensured by the frequency separation between the services. This particular issue was already raised at the time of UK Broadband’s variation request in 2007. We concluded then that there would be no disproportionate reduction in the spectrum quality of FSS users, on the basis of the low number of FSS stations in the lower part of the 3600 – 3700 MHz. The situation with regard to the RSA block is slightly better, in that there is a larger frequency separation between the top of the RSA block at 3580 MHz and most of FSS use – above 3700 MHz. We think this separation should be enough to mitigate the effect of interference.

4.74 With regard protection of FSS stations located outside the UK from BWA emissions in the band 3400 - 3600 MHz, the UK is bound by the limits in ITU Radio Regulations footnote 5.430A.

ESOA welcome these statements which generally alleviate our original concerns about the interpretation of the EC decision, as implemented in the UK.

With regard to the potential for interference from new users of the band 3400-3600 MHz to FSS earth stations operating above 3600 MHz (addressed in para 4.73), ESOA remains concerned that interference will occur to UK earth stations. There have been numerous cases identified in other countries where BWA deployment has caused interference to FSS earth stations operating on near or adjacent frequencies. Any new operators in the bands 3400 – 3480 MHz and 3500 – 3580 MHz should be required to resolve any such interference issues with the earth station licensee if such cases arise.

With regard to potential interference to FSS earth stations operating in the band 3400-3600 MHz outside the UK (addressed in para 4.74), we note that international coordination obligations exist through Article 9 of the Radio Regulations, in addition to those in footnote. 5.430A.

ESOA notes that Ofcom proposes licence conditions for any new operator in the bands 3400 – 3480 MHz or 3500 – 3580 MHz to protect other terrestrial service operations in the adjacent bands. ESOA requests that the licence conditions also include the above mentioned requirements for protection of UK FSS earth stations operating on near-adjacent frequencies and for the protection of earth stations operating on the same frequencies in other countries.

Sincerely,

Aarti Holla-Maini  
Secretary General  
+32 2 550 35 75  
[sg@esoa.net](mailto:sg@esoa.net)