



20 December 2007

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Dear Stephen,

ESOA is pleased to provide a response to Ofcom's 2007 consultation on *the Procedures for the Management of Satellite Filings - Charges and Amendments to Procedures*.

The European Satellite Operators' Association (ESOA) was formed in March 2002 to represent the interests of the industry with key European organizations and national regulators. ESOA's goals include ensuring that the satellite industry benefits from the appropriate political, industrial and regulatory environment to fulfil their vital role in the delivery of communications.¹

ESOA noted that Ofcom has offered additional information on 19 December 2007 in relation to this consultation. We have briefly examined this information, and noted that it relates primarily to cost recovery, which has already been addressed in this response. We are unable to take this additional information into account in this response, and therefore expect to provide supplementary comments at a future date. We would request Ofcom to note that our comments offered under cost recovery could be further amended in our supplementary comments, and therefore should not be taken as the definitive views of ESOA.

¹ The activities and other details about ESOA can be found at www.esoa.net. Members of ESOA are: Astrium Services, Eurasiasat, Eutelsat, HellasSat, Hispasat, Inmarsat, SES, SES Sirius, Telenor and Telespazio. Arianespace, Astrium Satellites, Avanti, International Space Brokers, Mansat, Marsh, Thales Alenia Space and Willis are Supporting Members of ESOA.

General Comments

ESOA would like to reiterate the general concern about various proposals which Ofcom has made earlier this year to change the procedures to manage satellite filings.² We expressed the view that satellite filings are very properly managed at ITU level and any policy orientations adopted by sovereign countries should be as much in line with ITU procedures as possible, and not go beyond the requirements placed by the ITU Radio Regulations.

The publication of the new Ofcom Procedures in March 2007 was followed by a workshop with industry in April 2007, when the industry made clear that Ofcom's approach to introduce filtering at national level through a strict due diligence process was unwelcome and unnecessary at the filing stage. Nevertheless, we welcome this consultation to amend certain procedures published in March 2007 by further consulting the industry.

We would also like to express a general concern on the level of cost Ofcom is seeking to recover (as the cost of managing satellite filing and coordination work), and the lack of transparency of these costs. The previous Ofcom Statement (A statement on procedures for the management of filings and international coordination for satellite networks), noting the comments offered to the previous consultation (of 2005), stated: "The majority of responses accepted the principle of fees, provided these were set on a cost-recovery basis, transparent, proportionate and subject to consultation on detail".³ We expect to see more transparency of these costs allowing the industry to consider carefully the level of and the basis for costs Ofcom is seeking to recover.

We are surprised not to see any further discussion on the fee reductions Ofcom offered to Overseas Territories, Channel Islands and the Isle of Man, if they are to undertake any functions (in relation to satellite filing and coordination) that would lead to a reduction in Ofcom's workload. Many filings have been made by these jurisdictions, and if these jurisdictions are to undertake further work it would result in a reduction in Ofcom's workload (and therefore the costs). This would have a direct impact on the total cost to be recovered. We believe it would be necessary to clearly establish these matters before embarking on levying any cost recovery fees.

We would also offer as a general comment that in the absence of any discussion in the consultation document on such important matters (mentioned above) it becomes very difficult to offer fuller consideration to this important consultation. This also deprives us from commenting on them. We would urge Ofcom to provide at a future date the additional information, with a suitable discussion, as an extension to this consultation, to enable industry to offer its fuller consideration to these important issues.

² http://www.ofcom.org.uk/radiocomms/ifi/licensing/classes/satellite/procedure_manuals/spectrum_filings/satellite_filings.pdf

³ http://www.ofcom.org.uk/consult/condocs/satellite_networks/statement/satellite.pdf

Answers to the Questions

Q1. Are there any other options for cost recovery we should consider? If so, what are they?

As we comment above under General Comments, we would wish to see greater transparency of costs for satellite filing and coordination work carried out by Ofcom. This will have a crucial bearing in determining the method of cost recovery.

Concerning Overseas Territories, Channel Islands and Isle of Man, Ofcom recognised in the Statement issued in March 2005 that “Fees charged for filings on behalf of territories Ofcom represents would take into account any reduction in Ofcom workload resulting from functions carried out by the administrations of those territories. To the extent that a UK-represented territory relieves Ofcom of certain responsibilities and functions, the fee would be lower”.⁴ However, Ofcom has not offered any further discussion on this matter, and none of the methodologies for cost recovery now proposed in the Consultation have taken this into account.

We would expect to see a fuller discussion of these matters as they would impact on the total cost that Ofcom would wish to recover.

Q2. Do you agree with Ofcom’s choice of preferred option for the basis of setting cost-recovery fees for satellite filings and co-ordination? If not, what alternative would you propose and why?

ESOA certainly believes that Ofcom’s fees should be purely based on the recovery of actual costs for satellite filings and coordination. However, if fees are based on Ofcom’s budgeted costs, rather than actual costs, there is potential for operators to pay more or less than the actual costs. For example, for a year in which the number of satellite filings is lower than expected, Ofcom’s budget could be significantly higher than the actual costs incurred. Furthermore, and perhaps more importantly, there would be little built-in incentive for Ofcom to keep the associated costs to the minimum. Therefore, if Ofcom does base fees on budgeted, rather than actual costs, an open and transparent process would be necessary to ensure that fees are accurately determined, fair, and fully justified to those who will pay them.

In line with this general approach of fair attribution of costs, Ofcom should examine fees in relation to Overseas Territories, Channel Islands and Isle of Man to ensure that any reduction in work that can be consistently attributed to such filings is reflected in reduced fees.

Also, we expect that the costs incurred by Ofcom are not fully proportionate to the number of filings made. For example, costs for an operator which submits ten filings in a year are not ten times the costs for an operator which submits only one filing. In most cases that coordination requests are made for multiple orbital locations, the same information is copied in each filing. Also, the work involved for Ofcom in organising and attending coordination meetings is largely independent of the number of satellite filings involved.

⁴ http://www.ofcom.org.uk/consult/condocs/satellite_networks/statement/satellite.pdf

Hence, we anticipate that if Ofcom proceeds with the approach proposed, further discussion will be required with operators to ensure that the initial fees are set fairly. Subsequent regular (e.g. annual) meetings and presentation of relevant information will be required to ensure that fees remain appropriate for future years.

Q3. Do you agree with the proposal that the Procedures should be amended so that, before submitting a request for co-ordination to the ITU, Ofcom should accept evidence of the existence of construction and launch contracts, or a firm date on which they are expected to be signed as a sufficient basis for submission of a request for co-ordination to the ITU?

ESOA welcomes Ofcom's intentions to get back to a more realistic proposal to show evidence of 'plans' to build and launch a satellite before ITU submission, rather than producing an actual contract with a manufacturer which in many cases may not be possible.

The original introduction in the UK of due diligence requirement as contained in RA301 was a reflection of an emerging flood of start-up companies. The Radiocommunications Agency (RA) at the time felt it necessary to have at its disposal a means to ask questions if they were approached by what they considered questionable newcomers. These due diligence procedures were never applied as a whole but used as a security just in case. It is our belief that, in today's mature and consolidating satellite industry environment, this approach is getting burdensome and should be fundamentally reconsidered

It should be understood that filings for multiple orbital locations are often a requirement for new satellite networks. This is because the congestion in the satellite bands means it is often impossible to determine the best location for a new satellite at the outset, and several options have to be explored during the coordination process. This inevitably means some filings are never used, but is necessary to ensure operators have the flexibility to reduce the risk associated with coordination of new networks. The ITU cost recovery fees have already provided a very effective incentive for operators to minimise the number of filings.

Q4. Do you agree that Ofcom should suppress filings at the ITU if operators request it to do so without inviting expressions of interest from other UK operators?

ESOA agrees with this approach, provided this is extended to operators resident in the Overseas Territories, Channel Islands and the Isle of Man as well; and this is made in a very consistent and transparent manner. In particular, we would like to highlight that, if an operator wants a filing cancelled, it ought to be cancelled and certainly not allocated to another operator.

Sincerely,

Aarti Holla-Maini
Secretary-General ESOA

