



Procedures for the Management of Satellite Filings

A Statement on amendments to procedures

Statement

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Section 1

Summary

- 1.1 This statement presents Ofcom's partial conclusions following a consultation on two elements of Ofcom's activity in relation to processing satellite filings. The first element relates to the published Procedures for the Management of Satellite Filings¹ (the "Procedures") concerning the:
- deliverables required from operators before submission by Ofcom of a Request for Coordination; and
 - action to be taken by Ofcom in the event that an operator wishes to relinquish a filing
- 1.2 Our decisions in respect of the Procedures are as follows:
- Stages 2 and 3 of Table 1 of Section 5 to be combined and amended so as to require applicants to provide, in respect of construction and launch contracts, a copy of the relevant contract, or evidence that a contract exists, or a firm date on which the contract is expected to be signed.
 - Sections 12.1, 12.2 and 12.3, and consequentially 12.8, 13.4, 13.5 and 13.9 of the procedures to be amended to indicate that in the event that a UK satellite operator notifies Ofcom that it wishes to relinquish an existing filing, the assignments of which are either recorded or still in the process of coordination, the filing will be cancelled by Ofcom, in accordance with the relevant ITU procedures.
- 1.3 These amendments will be incorporated into the Procedures, which are available at www.ofcom.org.uk/radiocomms/ifi/licensing/classes/satellite/procedure_manuals/spectrum_filings
- 1.4 On the second element, we have not yet reached a conclusion on matters concerning recovery of the costs Ofcom incurs in relation to undertaking frequency coordination and administrative work for UK satellite networks submitted or to be submitted to the International Telecommunication Union (ITU) in order to gain international recognition under the ITU regime. Ofcom will provide further information on this issue in due course.
- 1.5 The consultation document was published on 8 November 2007 with additional information published on 19 December 2007. Both documents are available electronically at <http://www.ofcom.org.uk/consult/condocs/filings/>

¹ www.ofcom.org.uk/radiocomms/ifi/licensing/classes/satellite/procedure_manuals/spectrum_filings

Section 2

Background

- 2.1 In February 2005 Ofcom consulted on the revised procedures for the management of satellite filings². At the end of the consultation period Ofcom issued a statement in March 2005³. In addition to addressing Ofcom's procedures for the authorisation of satellite networks, the February 2005 consultation sought views on the principle of Ofcom recovering its overall costs for the range of services involved in submitting satellite network filings and subsequent frequency coordination activities. The March 2005 statement indicated that the majority of responses accepted the principle of cost recovery, subject to consultation on the detail. In the statement, Ofcom indicated it would consult further on the detail of setting fees.
- 2.2 The new procedures arising from that consultation were published in March 2007⁴. Following publication of the Procedures, Ofcom held a 1 day workshop with stakeholders on 30 April 2007. During the workshop a number of issues were discussed and as a result of these discussions and, in the light of experience since the publication of the Procedures, Ofcom reviewed its practices and requirements.
- 2.3 In the November 2007 consultation document, Ofcom proposed specific amendments to two areas of the Procedures as follows:
- Amend the due diligence deliverables (section 5.5 Table 1) to be provided by operators before Ofcom will submit a request for co-ordination to ITU, to require applicants to submit to Ofcom copies of the relevant contracts or a plan indicating a firm date by which the contracts are expected to be signed; and
 - Amend the Procedures to indicate that when an operator indicates to Ofcom that it wishes to relinquish a filing, Ofcom will take action to suppress that filing at the ITU.
- 2.4 Following from the indication in the 2005 statement, a consultation document for the implementation of satellite filing cost recovery and amendments to the satellite filing procedures⁵ was published on 8 November 2007 and indicated a deadline of 20 December 2007. The document was in two parts, the first (containing Questions 1 and 2) dealing with methods for implementing cost recovery for Ofcom's satellite filing and frequency coordination activities, and the second (Questions 3 and 4) proposing amendments to two specific parts of the published Procedures for the Management of Satellite Filings.
- 2.5 In respect of seeking to cover the costs of satellite filing and frequency coordination, in this consultation document Ofcom suggested a number of methods which might be employed and sought views on these. The methods identified were

² www.ofcom.org.uk/consult/condocs/satellite_networks/satellite_networks2

³ www.ofcom.org.uk/consult/condocs/satellite_networks/statement

⁴ www.ofcom.org.uk/radiocomms/ifi/licensing/classes/satellite/procedure_manuals/spectrum_filings

Procedures for the Management of Satellite Filings

⁵ www.ofcom.org.uk/consult/condocs/filings

- 2.5.1 A lifetime fee for every new filing. This would entail dividing the cost to be recovered (currently £400000 per year) by the number of new network filings received per year (we estimated that this would be an average of 27).
 - 2.5.2 An hourly charge. This would entail dividing the cost by the number of hours spent on each network filing.
 - 2.5.3 An annual charge per network. This would entail dividing the cost to be recovered by the total number of 'live' networks (i.e. those in coordination or already notified to the ITU) as at 1 April each year. The charge would be payable in advance.
 - 2.5.4 A scaled fee. This would be similar to the annual charge, but the fee would depend on the stage reached in the lifecycle of each network, with an initial application fee, a fee while the network was in the coordination phase and a lower fee once the network had been notified to the ITU.
- 2.6 Ofcom sought views on these possible methods and also asked whether respondents had any other suggestions by which Ofcom could recover its costs in performing its satellite filing and frequency coordination activities.

Section 3

The role of Ofcom

- 3.1 In the UK, Ofcom is the national administration by direction of the Secretary of State under section 22 of the Communications Act 2003 ('the 2003 Act') and acts as the UK notifying administration⁶ under ITU procedures in relation to international management of the spectrum and orbit resources.
- 3.2 Also relevant are:
- Section 5 of the 2003 Act, which gives the Secretary of State power to give directions to Ofcom for the purpose of securing compliance with international obligations, as well as for other specified purposes such as in the interests of national security; and
 - Section 1 of the Wireless Telegraphy Act 2006, which confers spectrum management functions on Ofcom, including the provision of advice and services and the maintenance of records with respect to the use of the electro-magnetic spectrum at places within and outside the UK. The Secretary of State may require Ofcom to exercise these functions for the purpose of complying with the UK's international obligations
- 3.3 Ofcom's services with respect to satellite network filings involve the submission of satellite network filings to the ITU and the subsequent frequency co-ordination activities. These processes are intended to ensure that new satellite networks can be brought into service without causing harmful interference to, or receiving harmful interference from, existing or planned services.
- 3.4 Ofcom provides these services in accordance with:
- procedures established by the ITU and specified in the Articles and Appendices of the Radio Regulations; and
 - procedures set up by Ofcom and specified in "Procedures for the Management of Satellite Filings".
- 3.5 Since 29 December 2003, when Ofcom assumed its powers and functions under the 2003 Act, Ofcom has represented the UK in certain bodies concerned with the management of the radio spectrum. In addition to this representation, as part of its role as the UK administration in the ITU, Ofcom provides the service of processing filings for satellite networks in accordance with the procedures set out in the ITU Radio Regulations for the co-ordination, notification and recording of frequency assignments used by satellite networks in order for those frequency assignments to gain international recognition.

⁶ The British Overseas Territories, the Channel Islands and the Isle of Man are not sovereign states and, therefore, cannot become ITU Member States in their own right. Ofcom therefore fulfils the role of notifying administration for the British Overseas Territories, the Channel Islands and the Isle of Man.

- 3.6 Ofcom checks, validates and submits satellite network details to the ITU which are then circulated to other administrations. Ofcom then engages with other administrations, as necessary, to coordinate the satellite networks.
- 3.7 The activities that lead to the permanent establishment and subsequent operation of a UK satellite network primarily comprise 2 formal stages; co ordination and notification / recording. Once established, co-ordination continues but in respect of junior networks.

Co-ordination

- 3.8 Submission by the UK administration to the ITU of the applicant's general description (filing) of the proposed satellite network followed by detailed co-ordination data.
- 3.9 The UK administration is also required to facilitate co-ordination with other administrations that may be affected by the operation of the network. The co-ordination procedure, which is an obligatory process of negotiation between administrations, is progressed with the aim of achieving efficient use of the orbit/spectrum resource through a controlled interference environment in which satellite networks can operate while satisfying actual requirements.
- 3.10 Both administrations and satellite operators undertake satellite co-ordination activities and generally speaking, satellite co-ordination activities take place between:
- The ITU and administrations;
 - Administrations;
 - Administrations and satellite operators; and
 - Satellite operators.

Notification and Recording

- 3.11 The UK administration notifies the ITU when co-ordination is complete or the network is about to be brought into use. Subject to the ITU finding that the operation of the network will not cause harmful interference, the frequency assignments of the network are then recorded in the Master International Frequency Register.
- 3.12 The ITU maintains a Master International Frequency Register, also known as the Master Register, of frequency assignments used by Radiocommunications networks. This includes frequency assignments used by satellite networks. Once the details of a network are recorded in the Master Register, other administrations must take them into account when planning their own assignments, in order to avoid causing harmful interference.
- 3.13 The process and activities resulting in the permanent record of a satellite network in the Master Register are referred to as the 'establishment' of a satellite network. Only Ofcom acting as the UK administration can establish a UK satellite network and only when recorded in the Master Register can a satellite network be considered

established⁷. As a rule, the procedures envisage that the satellite networks will commence operation after they are established.

Co-ordination after establishment

- 3.14 Once a satellite network has been established and the frequency assignments have been brought into use, co-ordination activities continue to be necessary in order to protect the operational characteristics of the network from proposals for new or modified networks. For example, another administration may propose a satellite network that has the potential to cause harmful interference to an established UK satellite network. If this is the case, Ofcom advises the proposing administration of its concerns and requests co-ordination in order to ensure that technical compatibility is achieved.
- 3.15 The services and facilities provided by Ofcom in support of the establishment and operation of a UK satellite network are maintained for the life of the satellite network. This is the period of time from the ITU filing date of receipt until the end of operational period of validity or until the network's frequency assignments are cancelled (i.e. the frequency assignments are no longer taken into account) through the regulatory and procedural process.

⁷ This summary is a very brief overview of the process used to establish a satellite network and is not intended to provide authoritative advice or guidance about the process. Any person interested in the establishment of a satellite network should refer to the ITU Radio Regulations and the Ofcom document - Procedures for the Management of Satellite Filings.

Section 4

Responses and conclusions

Method of implementation of satellite filing cost recovery

- 4.1 Questions 1 and 2 of the consultation document addressed possible methods by which Ofcom could recover its cost in the area of satellite filing and international frequency coordination. As stated previously, Ofcom has not yet reached a conclusion on these matters and will provide further information on this issue in due course.

Specific amendments to the Procedures for the Management of Satellite Filings

Due diligence requirements at or before submission of a request for coordination

- 4.2 In Table 1 of Section 5 of the published procedures, Ofcom requires operators to submit copies of the construction and launch contracts before we submit a request for co-ordination to the ITU. Since the request for co-ordination may occur 6 months into the 7 year regulatory period (i.e. the maximum period from receipt by the BR of an API to notification) and can be made concurrently with the Advance Publication Information submission right at the outset, it is sometimes not possible to supply satellite construction and launch contracts with this co-ordination data. It can also be the case that financial institutions, on which satellite operators sometimes rely in order to finance the project, require certainty that the proposed satellite system has commenced the regulatory processes before underwriting the project. This can be a requirement on the operator to prove that the co-ordination data has been received at the ITU. In these circumstances therefore, to insist on sight of construction and launch contracts before submission of a request for co-ordination could erect a regulatory barrier that could prevent viable satellite systems from being launched.
- 4.3 Ofcom proposed to amend the procedures to require applicants to provide Ofcom with either the contracts, or evidence of their existence, or a firm date on which the contracts are expected to be signed. This date would be considered as a regulatory milestone and failure to adhere to it would trigger further action as outlined in section 5 of the procedures.
- 4.4 Question 3 of the consultation asked whether Stage 2 in Table 1 of Section 5 of the published Procedures should be amended so that, before submitting a request for coordination, Ofcom should accept evidence of the existence of construction and launch contracts, or a firm date on which an operator expects them to be signed as a sufficient basis for submission of a request for coordination to the ITU.
- 4.5 Ten respondents addressed this question. Of those, seven were in agreement with the proposal and one more agreed in principle. One disagreed, questioning Ofcom's need to be provided with any date considering that operators have to pay cost recovery fees to ITU for processing the filing. The remaining respondent considered the proposal inadequate since it still required a firm date to be declared and considered that demonstrating progress toward securing contracts should be adequate.

4.6 According to the published Procedures, one of the deliverables at the outset of a satellite project is a project plan which identifies key milestones, including construction and launch anticipated dates. In view of this, we consider that it is not unreasonable to expect operators to provide projected dates for contract signature for these milestones. Ofcom needs to be confident that the project will proceed in accordance with the regulatory timescales and lack of expected contractual dates from operators does not provide us with that confidence. We have decided that Stages 2 and 3 in Table 1 of Section 5 of the Procedures should be combined, since they occur at the same time, and be amended as follows.

<p>Stage 2</p> <p>At or before the request for coordination</p>	<ol style="list-style-type: none"> 1. A copy of the relevant construction contract, or evidence that a contract exists, or a firm date on which the contract is expected to be signed. 2. A copy of the relevant launch services contract, or evidence that a contract exists, or a firm date on which the contract is expected to be signed. With the prior consent of Ofcom, the first or second of these may be provided no later than six months prior to the planned launch date. 3. A business plan showing progress at each stage against the milestones. 4. A full project report showing the financial, contractual and technical status of the project against the milestones specified in the business plan. 5. Interference analysis (see Article 9, Section II of the Radio Regulations) and a list of those identified administrations and networks with which coordination will be required
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Ofcom action when an operator relinquishes a filing

4.7 Sections 12.2 and 12.3 of the Procedures indicate that, when an operator wishes to relinquish an existing filing, Ofcom will publish a notice indicating that the filing has become available and invite expressions of interest from other eligible operators. Where more than one such expression of interest is received then Ofcom may conduct an award process.

4.8 During the workshop held after the publication of the Procedures, several operators expressed the view that Ofcom should not offer to other operators any filings or assignments that were no longer required by the original applicants. It was explained that many satellite operators are global in scope and in competition with each other. There was perceived to be little merit in the idea of keeping the filing as a UK asset, and the prospect of a filing on which co-ordination effort had been expended falling into the hands of such a competitor was a disincentive for operators to relinquish filings voluntarily. It was also explained that there are scenarios in which allowing a

relinquished filing to be acquired by another operator could make it more difficult for the original operator to pursue other filings. This was a further disincentive to relinquish filings. Workshop participants expressed the desire that should they voluntarily relinquish a filing, Ofcom should take action to suppress that filing if requested by the operator to do so instead of inviting expressions of interest.

- 4.9 There is an argument that offering the filing in these circumstances to another UK operator would be in the interests of the UK. On the other hand, if this acts as a disincentive to relinquish filings that are no longer needed, then that sterilises the orbit and spectrum resource and acts as a barrier to the introduction of new satellite services to the possible detriment of consumers.
- 4.10 Question 4 of the consultation asked whether, in Sections 12.2 and 12.3 of the Procedures, Ofcom should suppress filings at the ITU if operators request it to do so, without inviting expressions of interest from other UK operators.
- 4.11 Ten respondents addressed this issue. All were in support of the proposal, one commenting that this proposal removes the possibility of relinquished filings falling into the hands of a direct competitor - a substantial disincentive to relinquishing filings. There was no adverse comment. Ofcom has therefore decided to amend its policy and to take action to suppress a UK filing at the ITU, without inviting expressions of interest in the filing from other eligible operators, if the operator concerned wishes to relinquish it. Sections 12.1, 12.2 and 12.3, and consequentially 12.8, 13.4, 13.5 and 13.9 of the Procedures are amended as follows:
- 12.1 A UK satellite operator may relinquish the use of an assignment in either a planned or non-planned band which is either:
- a) notified and recorded in the Master Register and in operation; or
 - b) still in the process of coordination,
- to Ofcom.
- 12.2 In the event that a UK satellite operator notifies Ofcom that it wishes to relinquish an existing filing, the filing will be cancelled by Ofcom, in accordance with the relevant ITU procedures.
- 12.3 In the event that a UK satellite operator relinquishes a filing which is still in the coordination process, the filing will be cancelled by Ofcom, in accordance with the relevant ITU procedures.
- 12.8 Ofcom would expect that if the operator fails to remedy the situation within the specified timeframe, referred to in section 12.7, Ofcom may cancel the filing in accordance with the procedures set out in section 12.1 to 12.4
- 13.4 The British Overseas Territories, the Channel Islands and the Isle of Man have a period of six months (or such longer period as may be agreed with Ofcom) in which to manage the transfer of a filing to another operator within the same jurisdiction. If no transfer has been completed within this six month period, Ofcom will cancel the filing with the ITU-BR.
- 13.5 A satellite operator in a British Overseas Territory, the Channel Islands or the Isle of Man may notify the appropriate regulatory authority in its jurisdiction that it wishes to relinquish an existing filing or a filing which is still in the

coordination process. The appropriate regulatory authority will then have a period of six months (or such longer period as may be agreed with Ofcom) in which to manage the relinquishment or reassignment of the filing to another operator within the same jurisdiction, subject to compliance with due diligence requirements, as set out in section 5 of this document, and the ITU rules and regulations. If no reassignment has been completed within this six month period, Ofcom will follow the procedure as set out in section 12.1 to 12.4.

- 13.9 If the situation is not resolved after the expiry of the time period referred to in 13.8, as assessed by Ofcom on the basis of the due diligence documentation and any other evidence supplied by the operator, ultimately Ofcom may cancel the filing in accordance with the procedure set out in section 13.5

Annex 1

Summary of the responses to the cost recovery consultation

A1.1 The following provides a summary of the responses to questions 3 and 4 of the satellite filing cost recovery consultation. Ofcom has not yet reached a conclusion on the cost recovery issues in questions 1 and 2 of the consultation and will provide further information on this issue in due course.

A1.2 Question 3:

<i>Q -3 Do you agree with the proposal that the Procedures should be amended so that, before submitting a request for coordination 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 coordination to the ITU?</i>	
<i>Response comments</i>	<i>Ofcom position</i>
<p>So long as the firm dates established for construction and launch contracts are consistent with a timetable that will allow the operator to bring the filing into use within the regulatory lifetime of the filing, Ofcom would have sufficient basis for proceeding with a request for co-ordination.</p> <p>This amendment to the Procedures will be beneficial to all operators since it is only in a relatively small number of cases, such as when an operator moves a satellite to a new orbital position, that both construction and launch contracts would be available at the time of submission of a Request for Co-ordination.</p> <p>The more realistic proposal to show evidence rather than the actual contract is welcomed.</p> <p>The proposal is considered inadequate as it still requires a 'firm' date for signature which does not serve the purpose of increasing flexibility or reflecting commercial reality. The information required is only believed vital for licensing under the Outer Space Act, for securing insurance and completion of Resolution 49.</p>	<p>According to the published Procedures, one of the deliverables at the outset of a satellite project is a project plan which identifies key milestones, including construction and launch anticipated dates. In view of this, we consider that it is not unreasonable to expect operators to provide projected dates for contract signature for these milestones.</p> <p>Ofcom needs to be confident that the project will proceed in accordance with the regulatory timescales and lack of expected contractual dates from operators does not provide us with that confidence.</p>

<p>Propose 'planned' date as opposed to a 'firm' date.</p> <p>Ofcom should not require evidence of the existence of a construction or launch contract (or firm date for one) before co-ordination request is submitted to the ITU. The need to provide information in addition to that provided to the ITU is questioned.</p>	
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A1.3 Question 4:

<p><i>Q -4 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?</i></p>	
<p><i>Response comments</i></p>	<p><i>Ofcom position</i></p>
<p>This will remove what could otherwise be a substantial disincentive to relinquishing filings that have outlived their usefulness and are no longer needed by the applicant</p> <p>This would be a welcome improvement to the procedures as it would not only give protection to existing filings but may also encourage operators to relinquish filings no longer required.</p>	<p>We agree that we should suppress filings at the ITU if we are requested to do so by the operator</p>

Annex 2

List of respondents

A2.1 The list of respondents to the consultation is as follows:

Government of Bermuda

DirectTV UK Ltd

European Satellite Operators Association

Inmarsat

Intelsat Holdings, Ltd

Isle of Man Communications Commission

ManSat Ltd

EADS Astrium Services & Paradigm Services

SAP REG

SES Satellites (Gibraltar) Ltd

Telesat