

COMMENTS OF INTELSAT HOLDINGS, LTD.

Intelsat Holdings, Ltd. (“Intelsat”) takes this opportunity to provide comments in response to Ofcom’s December 19, 2007 Additional Information¹ regarding the November 8, 2007 consultation entitled “Procedures for the Management of Satellite Filings; Charges and amendments to procedures”.

Headquartered in Bermuda and with offices and partners in several countries, including the United Kingdom, Intelsat is the leading provider of fixed satellite services (FSS) worldwide, delivering advanced transmission access for information and entertainment to some of the world’s leading media and network companies, multinational corporations, Internet service providers and governmental agencies. Intelsat also offers seamless service for voice, data and video transmission unmatched in the industry. With numerous ITU filings made through the United Kingdom, Intelsat has a direct interest in the outcome of this consultation.

Intelsat submitted comments in response to Ofcom’s earlier consultation of February 2005². In those comments³, Intelsat recommended that in considering this issue of recovering the costs associated with Ofcom’s work relating to satellite network filings, Ofcom should take into account the wider benefits that satellite networks bring to the United Kingdom. These benefits include, for example, increased consumer choice, as well as greater access to, and capacity for, critical infrastructure. Given these benefits, in

¹ <http://www.ofcom.org.uk/consult/condocs/filings/information/>, retrieved January 15, 2008

² “Procedures for Authorisation of Satellite Networks”, February 4, 2005; http://www.ofcom.org.uk/consult/condocs/satellite_networks/satellite_networks2/, retrieved January 15, 2008

³ “Intelsat Comments on Ofcom’s Proposals on Procedures for Authorization of Satellite Networks”, http://www.ofcom.org.uk/consult/condocs/satellite_networks/responses/intelsat.pdf, retrieved January 15, 2008

adopting a method for recovering its costs, Ofcom should take care to ensure that it is accurately capturing its costs and not creating disincentives that force satellite operators to search for other administrations which impose lighter regulatory burdens. Intelsat notes that in its Statement⁴ in response to the February 2005 consultation, Ofcom stated that⁵ it “will consult further on the details of setting fees for filings but can give an assurance that they will be set at a level that does not generate surplus revenue”. Intelsat also notes that Ofcom has a general duty to minimise regulatory burdens upon those it regulates.

Ofcom and the United Kingdom are today recognized as regional and international leaders in the areas of spectrum management and administrative regulation, and Intelsat has observed with interest the increasingly high profile of the United Kingdom’s space industry over recent months. It is clear that much of this influence derives not only from the United Kingdom’s willingness to engage and to innovate, but also through tangible interest in this sector, such as the number of filings the United Kingdom maintains at the ITU. Intelsat would urge Ofcom to maintain this role, and to adopt policies that would reinforce this position.

Further, although we are not aware of the provisions of the Memorandum of Understanding and Explanatory Note to which the Additional Information refers, the letter from the Isle of Man’s Communications Commission and Ofcom’s response suggests the possibility of confusion about the extent of Ofcom’s duty, any additional tasks undertaken in connection with this, and how Ofcom can or should charge for what it

⁴ “Procedures for Authorisation of Satellite Networks: A statement on procedures for the management of filings and international coordination for satellite networks”, March 24, 2005; http://www.ofcom.org.uk/consult/condocs/satellite_networks/statement/, retrieved on January 15, 2008

⁵ *Ibid.*, at section 3.9, fifth paragraph

does. In order to minimise confusion, and to ensure regulatory certainty, Intelsat urges Ofcom to strive for clarity and consistency when drafting its decision on these proposals.

In its November 8 consultation, Ofcom sets forth several proposals⁶ for recovering its costs. Intelsat herein comments on each proposal in turn, in the light of Ofcom's Additional Information.

One-off Lifetime Fee Per Network⁷

Although Intelsat agrees with Ofcom's analysis⁸ that a one-off lifetime fee per network provides operators with certainty regarding the amount of fees they will owe Ofcom, Intelsat also agrees with the disadvantages identified by Ofcom. Intelsat is concerned that this proposal does not accurately apportion Ofcom's costs to the filings, primarily because there are instances in which operators make filings through Ofcom that are never implemented, or never pursued in any way. The ITU filing process, for example, requires operators to make filings for potential future business opportunities and only later develop the necessary business case for the \$200-\$300 million investments required. For this reason, no work may be done with regard to some filings if the preliminary business assumptions were to change. For other filings, coordination discussions may end in unsatisfactory results that do not justify further efforts. If a request for coordination is not filed within two years of the date of receipt of the advance publication filing, then that filing will expire⁹. The lifetime fee proposal would thus require operators to pay up-front for work which might not be required and, in the case of

⁶ "Procedures for the Management of Satellite Filings: Charges and amendments to procedures"; Section 5, paragraph 5.10 et seq.

⁷ *Ibid.*, paragraph 5.11.

⁸ *Ibid.*, paragraph 6.2

⁹ See, for example, No. **9.5D** of the ITU Radio Regulations

those filings which did not progress to the coordination stage, would never be undertaken.

By assessing a one-time fee, Ofcom does not differentiate between those filings that entail significant work on Ofcom's behalf and those that do not require much work at all. Intelsat therefore urges Ofcom to adopt an approach that more accurately charges an operator for the costs Ofcom incurs for each specific filing.

Fixed Hourly Charge For Work Done On A Network

Intelsat believes this proposal to be reasonable, including the proposed minimum charge of 1,000 pounds, to reflect a minimum of 20 hours' work per filing per annum¹⁰. Intelsat generally agrees with Ofcom's analysis¹¹ that this method has the advantages of being more closely related to the costs involved with particular networks, and is more equitable to operators with low coordination requirements. Ofcom should, however, confirm that the hourly charge will only be assessed on work done with respect to specific filings, and not for general policy work. In addition, Ofcom should confirm that if its work jointly benefits the filings of more than one operator, Ofcom will prorate the hourly charge between the operators involved. Finally, Ofcom should confirm that its current practice of charging operators for Ofcom's travel expenses for coordination meetings will not continue if the fixed hourly charge proposal is adopted – *i.e.*, that these costs will not be double counted. The calculations for each of these proposals refers to

¹⁰ "Procedures for the Management of Satellite Filings: Charges and amendments to procedures"; Section 5, paragraph 5.12

¹¹ *Ibid.*, at paragraph 6.2

Ofcom's total costs of 400,000 pounds, and both the consultation¹² and the Additional Information¹³ make it clear that this figure includes travel and subsistence costs.

Ofcom identifies the disadvantage that this method does not provide operators with certainty about the overall level of charges they should budget for. Intelsat agrees that this is a disadvantage, and that it is preferable to have at least an estimated figure at the beginning of the year.

Annual Charge For Each Network

Intelsat favors this proposal in that it provides the operators with more certainty as to what their annual payments will be. In addition, it ensures that an operator will pay fees for particular filings only so long as those filings remain valid. This, in turn, ensures that operators are more accurately paying for the costs associated with their particular filings. Thus, if an operator elects to cancel a filing -- or allow a filing to expire -- prior to coordination, it will not have to pay for the costs associated with coordinating that filing, as Ofcom will not incur those costs. Ofcom's proposed charge of 2,000 pounds per year appears reasonable.

Scaled Fee For Each Network

Athough Intelsat supports the concept of a scaled fee because it is designed¹⁴ to more accurately assess the operator for costs incurred by Ofcom related to each specific filing, Intelsat is concerned that the proposed amounts do not accurately reflect the work incurred by Ofcom at each stage. In particular, Intelsat is concerned that the initial fee of 3,500 pounds may be too high for the amount of pre-coordination stage work that Ofcom would incur. Prior to coordination, the work that would be required of Ofcom is fairly

¹² *Ibid.*, at paragraph 4.11

¹³ Additional Information, Financial Information, Section 1, third paragraph

¹⁴ As per Ofcom's analysis in paragraph 6.2 of the consultation

minimal as compared to later stages. Indeed, because operators compile the necessary paperwork for the ITU, Ofcom's role is simply to review the applications to ensure that they comply with the ITU rules. Accordingly, Intelsat questions why the fee that Ofcom proposes for the initial application stage is so high.

Conclusion

In conclusion, Intelsat favors the annual charge per network approach as proposed by Ofcom. Such a method not only provides the operator with certainty regarding its annual fees, but also ensures that an operator is not paying for work that Ofcom is not incurring with respect to a particular filing. As noted above, Intelsat is also supportive of the concept of a scaled fee, but only if the charges associated with each stage are more closely aligned with the work required of Ofcom at each stage.