

## Cover sheet for response to an Ofcom consultation

### BASIC DETAILS

Consultation title: Procedures for the Management of Satellite Filings – Supplemental Comments to Additional Information

To (Ofcom contact): Stephen Limb

Name of respondent: John A Nelsen

Representing (self or organisation/s): SES Satellites (Gibraltar) Limited

Address (if not received by email):

### CONFIDENTIALITY

Please tick below what part of your response you consider is confidential, giving your reasons why

|                      |  |   |                          |
|----------------------|--|---|--------------------------|
| Nothing              | <input checked="checked" type="checkbox"/> | Name/contact details/job title              | <input type="checkbox"/> |
| Whole response       | <input type="checkbox"/>                   | Organisation                                | <input type="checkbox"/> |
| Part of the response | <input type="checkbox"/>                   | If there is no separate annex, which parts? |                          |

If you want part of your response, your name or your organisation not to be published, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

### DECLARATION

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Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

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Name: John A Nelsen

John A. Nelsen  
Vice President Business Operations  
January 16, 2008

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Dear Sir,

SES Satellites (Gibraltar) Limited ("SES-G") hereby provides supplementary comments to the Additional Information ("AI") published December 19, 2007, to the Consultation regarding charges and amendments to the Procedures for the Management of Satellite Filings ("Procedures") adopted by Ofcom in March 2007.

#### **General Comments**

As stated in our December 19, 2007, response to the Ofcom Consultation, SES-G is a Gibraltar satellite operator whose satellite activities are regulated by the Gibraltar Regulatory Authority ("GRA"). SES-G is aware that there exists a difference of opinion between the GRA and Ofcom as to the application of the Procedures to Gibraltar operators and filings made on their behalf through the GRA. These supplementary comments should not be interpreted by Ofcom as SES-G's acceptance of the application of the Procedures to Gibraltar based filings.

#### **Additional Information**

SES-G understands the AI provided by Ofcom as follows:

- Detail & Justification of Ofcom's Costs – Ofcom's cost estimate used in the Consultation was developed based on an apportionment of 2007/8 budget for staff, travel, subsistence and overhead based on the amount of time spent working on satellite filings.
- Likelihood of Further Increases in Costs - the cost basis of charges would be modified on an annual basis for the following year to accommodate salary and inflationary pressures as well as any increase in staff associated with variation in workload.



- Fees for Overseas Territories and Crown Dependencies – Ofcom argues that due to provisions in the October 15, 2007, Memorandum of Understanding (“MOU”) between Ofcom and the Secretary of State with associated Explanatory Note, Ofcom must, in its “representation role”, carry out identical functions to those carried out by the GRA, to include the performance of due diligence, in relation to satellite filings to be submitted to the ITU on behalf of the Overseas Territory of Gibraltar as set forth in the Procedures.

## Supplementary Comments

### Detail and Justification of Ofcom’s Costs

- SES-G concurs with the position of the Communications Commission, Isle of Man as detailed in their letter to Ofcom of December 5, 2006. Transparency of cost in sufficient detail is essential. Ofcom should disclose apportionment methodology and actual calculations to demonstrate that the apportionment is based on actual effort (captured hours) in processing filings and is not an arbitrary allocation.

### Likelihood of Further Increases in Costs

- Any cost variation, increase or decrease, should be transparent. Ofcom should provide a detailed breakdown of any variation along with rationale relating any variation to the actual workload in processing satellite filings.

### Fees for Overseas Territories and Crown Dependencies

- In its December 19, 2007 response to the Consultation, SES-G stated that costs associated with filings submitted to the ITU on behalf of the GRA should be de minimis as Ofcom had recognized in the 2005 Statement leading to the Procedures that reduced fee structures should be applied to the Overseas Territories, the Channel Islands and the Isle of Man in so far as there was a reduction in workload resulting from responsibilities and functions taken on by administrations of those territories.<sup>1</sup>
- The Explanatory Note states that “ITU ‘filings’ for radio frequencies and orbital slots must be submitted by Ofcom in accordance with ITU rules” and that Ofcom has no power to delegate its authority.
- The Procedures outline the due diligence requirements to be satisfied by an operator to include the delivery to Ofcom of a business plan, and copies of the relevant construction and launch services contracts prior

<sup>1</sup> Statement on Procedures for the Management of Filings and International Coordination for Satellite Networks, March 2005 §3.57: “Fees charged for filings on behalf of territories Ofcom represents would take into account any reduction in 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.” [http://www.ofcom.org.uk/consult/condocs/satellite\\_networks/statement/satellite.pdf](http://www.ofcom.org.uk/consult/condocs/satellite_networks/statement/satellite.pdf)

to the filing of the request for coordination. These required deliverables go beyond the scope of the requirements of Ofcom as a national administration under the ITU Radio Regulations - to ensure compliance with the due diligence requirements of ITU RES 49<sup>2</sup>.

- Under the Communications Act 2003 Section 22 Ofcom have the power, if requested by the Secretary of State, to “provide representation” on behalf of the UK Government and the British Overseas Territories on international bodies, including the ITU. The DTI requested Ofcom to extend their arrangements for “international representation” to cover British Overseas Territories on January 31, 2005. Ofcom agreed to represent the British Overseas Territories by letter dated March 1, 2005.
- The Memorandum of Understanding (“MoU”) between the Secretary of State and Ofcom, signed on October 15, 2007 sets out Ofcom’s role in “representing” the Overseas Territories. The MoU states that there is “no intention to interfere in the regulation of electronic communications carried out by lawfully constituted bodies including when it comes to radio licensing.”
- The Gibraltar Constitutional Order 2006 (“Constitution”) states that the Gibraltar Constitution gives the people of Gibraltar that degree of self government which is compatible with British sovereignty of Gibraltar and with the fact that the UK remains fully responsible for Gibraltar’s external relations. Section 32 of the Constitution gives the Gibraltar Legislature the power to “make laws for the peace, order and good government of Gibraltar”, allowing it to make laws and regulations that will be recognised by the UK Government, while the latter performs representative functions in relation to Gibraltar’s external relations.
- While Ofcom is free to establish due diligence requirements in the Procedures which go beyond the scope of the ITU Radio Regulations, given the above stated provisions of the Constitution, the application of the due diligence requirements must be limited to such due diligence requirements as detailed in the ITU Radio Regulations and associated Guidance Notes. This is fully consistent with the January 31, 2005, request to Ofcom from the Secretary of State to provide “international representation” at the ITU on behalf Gibraltar.
- Ofcom’s role is to “represent” the interests of the Overseas Territories at the ITU and to submit ITU filings which satisfy the UK’s international obligations. Ofcom does not have the power to impose additional requirements which would override regulations imposed by lawfully constituted bodies, such as the GRA, in the Overseas Territories and which meet the UK’s international requirements.
- No directions or requests have been made by the Secretary of State to Ofcom mandating Ofcom with anything more than a “representative” function.

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<sup>2</sup> ITU Radio Regulations, Resolutions and Recommendations, Annex 1 to RES 49, §4: “An administration requesting coordination for a satellite network under §1 above shall send to the Bureau as early as possible before the end of the period established as a limit to bringing into use in No. 9.1, the due diligence information relating to the identity of the satellite network and the spacecraft manufacturer specified in Annex 2 to this Resolution.”



## Recommendations

SES-G recommends that Ofcom modify its Procedures as follows:

- Cost Recovery Fees – Ofcom should adopt a reduced or no fee structure in relation to Gibraltar operators reflecting the responsibilities and functions taken on by the GRA.
- Due Diligence - Ofcom should adopt the proposed amendment.
- Suppression of Filings –Ofcom should adopt the proposed amendment.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jahred Nelson', written in a cursive style.