



## **Response by Sure (Isle of Man) Limited to the Communications Commission's Consultation on the Licensing of Satellite Earth Stations and related Modification of a Telecommunications Act Licence**

### *Introduction*

Sure (Isle of Man) Limited ("Sure") welcomes the Communications Commission's ("the Commission's") consultation on the above subject, which was issued by the Commission on the 2<sup>nd</sup> September 2015. As the Commission is aware, Sure holds a full Telecommunications Act 1984 Licence ("TA Licence") in the Isle of Man.

We are submitting this response on a non-confidential basis and are therefore happy for the Commission to share it with other interested parties and to publish it on the Commission's website.

**Commission Proposal 1:** Operators holding a full TA licence and other licensed operators may require a new Part in their Licence. New entrants will require a TA licence that includes the conditions of the new Part. Do you agree with this proposal?

Whilst Sure agrees in principle with this Proposal we would make the following observations:

- *The extent to which an operator that already holds a full TA licence may require a new Part in their Licence depends on how that particular operator's Licence is currently drafted, and whether there would be any specific obligations attached to the Earth Station service provision.*

In the case of Sure's Licence, we believe that the existing wording is already sufficiently wide to cover the provision of satellite telecommunications systems for the provision of satellite telecommunications services. Our view is reinforced when we compare our current Licence wording with the wording of the draft proposed licence variation contained in Annex 2 of this consultation.

Our original Licence was granted in May 2006 and authorises Sure to run telecommunications systems as specified in Schedule 3 of our Licence within the Isle of Man (“the Communications Provider’s Network”). The Licence states at Paragraph 6: “For the purposes of this Licence “Communication Provider’s Network” means any or all of the telecommunication systems run by the Communications Provider unless the context otherwise requires.”

Schedule 3 of Sure’s Licence was modified on 18 July 2008 and now states:

“The Communications Provider’s Network may be comprised of telecommunication systems of every description within the Island.”

Perhaps of most significance is the wording in Schedule 4 of our Licence, which sets out the Service and Connection Authorisation for the Communication Provider’s Network. The Connection Authorisation is set out in paragraph 2 and appears to be very wide ranging in respect of what can be connected to our Network. Most notably it authorises (at paragraph 2(c)) “any earth orbiting apparatus”.

The Service Authorisation is set out in paragraph 3 of Schedule 4, which states: “Subject to paragraph 1<sup>1</sup>, this Licence authorises the provision by means of the Communications Provider’s Network of **any telecommunications services.**” [emphasis added]

Given that our Licence already authorises us for any telecommunications system; allows earth orbiting apparatus to be connected to the system, and allows us to provide any telecommunications services, we do not believe any further modification of our Licence is necessary.

More significantly, we note that the draft proposed licence variation (in Annex 2 of the Consultation) for existing full TA licence holders does not include any additional conditions or obligations specifically related to Earth Station services, beyond the payment of fees (as set out in paragraphs 3 to 5 of the proposed variation). This applies both where there is the need to award an appropriate TA licence (which would not apply for any current full TA

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<sup>1</sup> Paragraph 1 states: “Nothing in this Licence removes any need to obtain any other licence that may be required under any other statutory provision.”

licence holders such as Sure), and where there is a need for a modified TA licence. We would respectfully suggest, however, that in cases where there is no need for such a modification (because the current Licence is drafted widely enough, as we believe is the case with Sure's Licence) then there are fewer costs involved for the Commission to justify charging the same fee as would be required for an entirely new applicant, who would require a TA licence of some form.

Even if the Commission believes that a modification is required for any current holders of a full TA Licence if only to give the Commission the right to charge an additional fee to cover the Commission's costs of making a recommendation to Ofcom for the spectrum allocation, then the costs involved – and therefore the fee - should be minimal. The requirement (as stated under paragraph 5) to pay fees to Ofcom for the appropriate Wireless Telegraphy Act ("WTA") licence fee for Earth Station spectrum is, we believe, already covered by Section 12 of the WTA. Ofcom simply does not issue spectrum licences before the applicable WTA fee is paid so we do not see how this requirement also needs to be explicit in the Isle of Man TA Licence.

We are aware that the recent 4G spectrum award process did require the Commission to modify Sure's TA licence. Similarly, successful applicants for the recent spectrum award process for 3.6GHz spectrum also required licence modifications. In both these spectrum award processes, however, there were specific conditions attached to the spectrum allocations – including notably "lose it or use it" and coverage conditions - which justified the need for appropriate licence modifications. This does not appear to be what is being proposed here, where it seems that no specific conditions will be attached to these spectrum awards, beyond the requirement to pay the appropriate fees. Any technical requirements, including with respect to potential interference issues, would seem to be already covered within the existing General Conditions of the TA licence, or within Ofcom's WTA licensing requirements.

We note that the Commission's proposed draft licence modification does refer to the transmission or receipt of Messages from earth orbiting apparatus but as noted above, there is already a reference to earth orbiting apparatus in Schedule 4 2(c) of our Licence.

- *We agree that new entrants should be required to hold a TA licence with the appropriate conditions. Where a new entrant is only interested in the provision of satellite telecommunication services then they should not be offered a full TA licence but instead one that is specific to satellite telecommunications services.*

In the same way that the Isle of Man currently has a number of competitors that are happy to operate under a more limited ISP licence (as opposed to a full TA licence) as that is their only area of interest, any new entrant that is only interested in providing satellite telecommunication services should also be able to operate under a limited licence specific to those services. This will ensure that any operator that is interested in investing in the Isle of Man but only for specific Earth station satellite services and associated infrastructure can enter the market relatively quickly, and with a proportionate and appropriate level of regulatory oversight. We understand that the Isle of Man competes with other much larger jurisdictions – such as the UK – for such capital intensive investments and so it would seem important to ensure that the Isle of Man licensing process is not unnecessarily costly or burdensome compared to these jurisdictions.

In addition, where a new entrant is proposing to invest significantly in infrastructure they are likely to require a licence that is of sufficient duration to enable them to achieve payback on their investment. This is a consideration for Sure's<sup>2</sup> own operations in satellite-dependent jurisdictions such as the Falkland Islands. As such, we believe that the Commission may need to consider an initial licence term of more than 5 years and would suggest a term of between 10 and 15 years would be more appropriate.

**Commission Proposal 2:** Spectrum for Earth Stations will be awarded on a first-come-first-served basis, and an obligation to launch a service within a specified amount of time will not be imposed. Do you agree with this proposal?

Sure recognises that satellite spectrum is not characterised by the same potential scarcity issues as the spectrum frequencies used for “traditional” mobile and fixed services. As such, there seems to be less of a justification for “use it or lose it” conditions. We would suggest that an applicant for satellite spectrum should not be allowed to hold such spectrum in

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<sup>2</sup> Here we are referring to Sure South Atlantic Limited, which like Sure (Isle of Man) Limited, is ultimately owned by the Batelco Group.

perpetuity without making efforts to deploy it within a reasonable time frame. However, given that Earth Station satellite facilities are major capital investments we would consider that there would be sufficient commercial pressures to ensure that a successful applicant for satellite spectrum would want to provide services using that spectrum as soon as possible, so they can start to achieve payback on their investment. As such, it is probably sufficient to offer a time-limited Earth station satellite-specific TA licence to ensure that the spectrum is used within a reasonable time.

Commission Proposal 3: the licence award process for spectrum to be used by Earth Stations will comprise three stages, i.e., an Application Stage, Evaluation Stage and Award Stage, as described above. Do you agree with this proposal?

Sure agrees in principle with the three stage approach, subject to our earlier comments regarding the need for a licence modification for any applicants that already hold a full TA licence. Where such a modification is not required then we would expect the application stage to be shorter than if a licence application were needed. Were the Commission to decide that a licence modification would be required even for holders of a full TA licence, we would expect that the timescale for achieving such a modification would be limited to the statutory consultation period that is required under Section 10 of the Act, given that a full TA licence holder would have already established their credibility (including financial standing) with the Commission. We acknowledge and welcome the Commission's intention to provide the statutory notice of modification in parallel with its spectrum allocation recommendation to Ofcom.

We suggest that it may be helpful for the Commission to provide some indicative timescales for completion of the three stage licence award process, distinguishing between the case of an already fully licensed TA applicant and a completely new entrant applying for a satellite specific licence and associated spectrum.

We have already queried above whether the same licence application fee of £3,000 should apply to new operators as opposed to existing operators who, in some cases at least we believe should not even require a licence modification in order to offer these services.

With respect to annual revenue-based licence fees for any Earth station/satellite-related activities, we believe that the principles applied should be consistent with those set out in the Commission's May 2015 Guidelines<sup>3</sup>. We would note, however, that by their very nature, many satellite services provided by Earth stations will be associated with services provided to offshore customers rather than any customers on the Isle of Man. We would draw the analogy with the Commission's treatment of pure transit as explained on page 4 of its Guidelines – where there is no origination, switching or termination in the Isle of Man then no revenue is subject to a licence fee.

*Conclusion*

Sure is grateful for the opportunity to respond to this consultation. We would be happy to discuss any aspects of our response further with the Commission.

Sure (Isle of Man) Limited

1st October 2015

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<sup>3</sup> Licensed Activities: Guidelines for calculating the licence fee, Communications Commission, May 2015