

OPTUS

Submission in response to
ACMA Consultation Paper

**Review of Australian
satellite filing
procedures**

October 2023

RESPONSES TO ACMA CONSULTATION PAPER

1. Optus welcomes the opportunity to provide feedback to the Australian Communication and Media Authority's (ACMA) Consultation paper *Review of Australian satellite filing procedures – September 2023* (the Consultation Paper).
2. Optus is the only network provider in Australia to own and operate its own fleet of five GSO satellites, providing a number of critical and sovereign satellite services to millions of Australians. These services include support for free-to-air television and radio services (VAST), satellite broadcast capabilities for Foxtel, voice and data services, and emergency services as well as mission control capabilities. Optus's future launch of the multi-band (Ka/Ku/QV bands) Optus-11 GSO satellite will deliver a new reliable high-capacity broadcast/broadband service catering to a wide range of demand nationally.
3. There is significant change in the marketplace for space-based communications as evidenced by the rapid increase in filings for non-GSO (NGSO) networks in the past two years. This has no doubt placed a strain on the ACMA's resources. Optus supports the ACMA's ongoing efforts to support Australian-filed satellite networks and welcomes the activities that the ACMA has planned in this regard for 2023-24.¹
4. Access to spectrum is a primary threshold requirement for access to space. The space industry is global, and the proliferation of space objects presents a real risk to the safe and effective operation of satellite activities. The ITU satellite filing arrangements provide a well-established and increasingly utilised framework to support international cooperation in the oversight and administration of space activities.
5. High quality, consistent and transparent national satellite filing procedures can be one mechanism to support coordination. If designed in a manner that balances procedural efficiency with domestic public interest considerations, then updates to Australia's filing procedures may serve as useful guidance to other filing administrations.

Filing procedures should help promote the public interest derived from spectrum

6. Australia is an important satellite jurisdiction as its geographic location allows space sector businesses to monitor their services and to offer global coverage. The Australian satellite filing procedures are part of the global filing arrangements underpinned by the ITU register (MIFR) of filings that enables satellite operators to engage in international coordination and gain recognition of the operation of stations on their satellites.²
7. The ACMA is proposing a number of proposals to improve the clarity and readability of the Australian filing procedures to ensure that they are more reflective of the current regulatory environment and industry practices. In Optus view the Australian satellite filing procedures have proven to be largely fit for purpose and have been utilised over the years to enable Optus, with the ACMA's support as the responsible administration, to coordinate effectively with other satellite operators.
8. That said, it is important that the filing procedures, last updated in 2011/12, remain up to date and we welcome the ACMA's review. Ultimately, the ACMA should seek to design its processes and procedures in a manner that will help promote the long-term public interest derived from use of the spectrum by satellite services.
9. To this end, it is in the public interest for any updates to be designed to support the Australian space industry and foster its development. This should be by way of reducing

¹ ACMA FYSO 2023-28, p.62

² see 1.2.2, draft Australian satellite filing procedures.

barriers to entry, operating costs and regulatory burden (both domestic and international).³ However, the benefits of lower administrative burden to support the satellite market must also be carefully weighed against the need to limit congestion and unnecessary costs to manage interference.

10. Optus considers that any changes to the ACMA's filing procedures should be designed to attract operators to file in Australia. Attracting filing to the ACMA will help improve the general quality of filings given the ACMA is a well-respected administration that adheres to international coordination arrangements and actively supports Australian operators.
11. However, consideration must also be given to the administrative and resource burden placed on the ACMA to undertake its role as the responsible administration for Australian filings. In Optus view, measures should be consistent with ITU processes and reduce the potential for duplicated filings and ultimately promote transparency of spectrum use and effective cooperation and coordination between operators.
12. Optus refers the ACMA to the submission from the Satellite Spectrum Working Group (SSWG) of the Communications Alliance. Optus generally supports the SSWG submission other than to the extent that it differs to the comments set out below.

Proposed revisions to application and assessment process

13. Optus supports an approach to regulation that is not excessively complex so as to inhibit innovation or new entry. In this context we support the ACMA's proposed expedited approval process for "short duration missions".⁴ However, procedures must also be sufficiently robust to act as a disincentive to gaming or abuse. Optus welcomes the clarifications provided that an ACMA assessment will be required when there is a modification to an existing filing as well as an ownership change or a filing transfer.⁵
14. Optus also welcomes confirmation that coordination activities with all potentially affected "Australian satellite operators" needs to commence before a filing application is lodged.⁶ Optus also considers that requiring applicants of a constellation of NGSO satellites to provide information on "the extent to which it is intended that services will be provided to Australia" and "the extent to which it is intended that services will be provided to other countries" will help promote transparency and ultimately the long term public interest

Proposed revisions to assessment criteria

15. Satellite is an expensive business, requiring significant capital investment. Yet the satellite "gold rush" that we are witnessing raises the real prospect of opportunism either by well-intentioned but underfunded operators or by those seeking to game filing arrangements to block or delay competition. The arrangements must strike the right balance between supporting ease of entry and encouraging applications from legitimate operators seeking to invest and supply services for the long-term benefit of Australians.
16. Optus welcomes the ACMA's proposed amendments to the assessment criteria. In particular, Optus considers that the ACMA's proposed "Australian benefit" criteria will help ensure greater alignment between Australian filings and the public interest derived from the use of spectrum for satellite services. Optus considers that introducing a "substantial" benefit criteria should help promote an Australian satellite market where

³ Adelaide Law School; submission 16 to the House of Reps Nov 2021 report; p.3

⁴ Section 2.2 of Consultation Paper, p.9

⁵ Consultation Paper, p.6

⁶ 2.3.2 and 3.6 of draft Australia satellite filing procedures

operators genuinely commit to invest and supply services to Australia that result in long term socio-economic benefits to Australia.

17. To this end, Optus supports aligning the concept of “substantial benefit to the Australian public” with the objects of the Radiocommunications Act.⁷ We consider that the term “substantial” given its ordinary meaning is an appropriate and suggests a more quantifiable and robust threshold for assessing the public benefit than “substantive”.⁸ While the examples of “substantial benefit” appear fit for purpose, perhaps further examples of the broader economic or social benefits could assist with interpretation.⁹
18. Optus also agrees with the ACMA’s statement that a condition of approval of filing application is that the ACMA’s ongoing support for a satellite operation is conditional on there being a substantial benefit to Australia.¹⁰ Optus considers this a sensible measure to ensure that the ACMA’s efforts and dedication of resources to support satellite operators with filings are directed towards delivering benefit to the Australian public.
19. Optus also welcomes the ACMA’s confirmation of the practice that Australia must be included in the service area of the applicant’s satellite system and that the ACMA will consider past performance when assessing the public benefit of a new filing request from an existing satellite operator.
20. Optus supports the ACMA’s proposed criteria concerning Australian jurisdiction. In this context, there is a need to ensure effective oversight of the space assets with respect to management of cyber risks.¹¹ That said, the ACMA should avoid imposing an undue administrative burden on operators through the proposed information requirements.
21. Optus notes the reference to the proposed text “If the incompatibility between the proposed and an existing satellite system is considered by the ACMA as particularly severe, the applicant must demonstrate that a coordination agreement has already been reached”.¹² Optus supports this text in principle and would assume that the use of the term “severe” may suggest that coordination is not possible (or very complicated) and therefore must be subject to an agreement between the parties. However, further clarification on the meaning of “severe” may help promote certainty.¹³

Revisions to ongoing management of satellite systems

22. Optus welcomes the ACMA’s proposals concerning coordination between Australia satellite systems. In particular, Optus supports the proposal to formalise the practice of seeking confirmation from other parties that coordination arrangements are satisfactory.

Change in ownership

23. Optus notes the ACMA’s proposal to require that a change in ownership of an entity with rights to an ITU satellite filing is a trigger for ACMA assessment. However, Optus would welcome further guidance and detail on the instances in which a change in ownership might trigger the ACMA’s assessment.

⁷ Under section 3 of the Act

⁸ Consultation Paper, p.13

⁹ Ibid

¹⁰ 4.10, draft Australian satellite filing procedures

¹¹ Prof. Melissa de Zwart and Joel Lisk; Low Earth Orbit, Satellite Constellations and Regulation; p.42

¹² 3.6.1, draft Australian satellite filing procedures’ p.18

¹³ Ibid, noting also that “severe” is used as a threshold for objection to a filing being submitted to the ITU.

Relationship between filing and licensing

24. Optus supports the ACMA maintaining the procedural distinction between filing and licensing. In particular, Optus endorses the ACMA's statement "that coordination matters between foreign-filed satellite systems are the responsibility of the relevant filing administration and satellite operators. Accordingly, Australia's and the ACMA's role is limited to the domestic licensing of these satellite systems."¹⁴
25. The ITU satellite coordination processes provide a tried and tested interference management framework. Optus welcomes the ongoing assistance that the ACMA provides to Australian filed operators to coordinate and resolve interference.
26. Optus notes that the ACMA is also inviting comment on "whether a case exists for us to investigate potential additional domestic regulatory intervention" including public consultation on applications received.¹⁵
27. Optus supports the ACMA engaging with Australian filing holders on new filing applications. Given satellite filing (from any administration) is a prerequisite to obtaining a radiocommunications licence, greater consultation on an Australian filing application could help promote early engagement on coordination between satellite operators.
28. However, Optus does not support regulatory intervention that would address both ITU satellite filing and domestic licensing as a single process. Such an approach may prompt duplication of filing in different jurisdictions which in turn may complicate international coordination processes that rely on a responsible administration to support the filing. The resourcing implications of excessive filings may detract from the ACMA's capacity to dedicate itself to spectrum matters of greater benefit to the Australian public.

Large NGSO satellite systems

29. Optus has previously noted concerns about the greater interference potential created by the rapid deployment of large NGSO constellations. Optus continues to recommend that the ACMA consult Australia satellite operators on licence applications from prospective NGSO/LEO operators.¹⁶
30. Optus recognises the considerable potential offered by NGSO entry, including innovative solutions like the Optus/SpaceX direct to mobile handset deal announced earlier this year.¹⁷ Optus welcomes the ACMA's stated position that the technology-flexible nature of the spectrum licensing regimes supports their delivery.¹⁸
31. Optus welcomes the ACMA's ongoing monitoring of the impact of foreign filed systems on Australian filed satellite systems and notes that the ACMA's approach may be influenced by the deliberations of the ITU Radio Regulations Board on this matter at the upcoming ITU World Radiocommunications Conference 2023 (WRC-23).

¹⁴ Consultation paper, p.21

¹⁵ Ibid; also refers to "large upfront bonds, licence application windows ('processing rounds' in some countries), public consultations on licence applications, auctioning of licences, and comparative assessment based on 'benefits' to be provided, measured against criteria (often called 'beauty contests'"

¹⁶ Optus draft FYSO 2023-28 submission, p.21

¹⁷ CommsDay, 13 July 2023

¹⁸ FYSO 2023-28, p.22