



**Briefing Paper for
Members of the Legislative Assembly Select Committee**

**Petition to Abolish or Reduce the VSAT Licence Fee and Approve
Starlink Domestic Tariffs**

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1 Introduction

- 1.1 The Legislative Assembly has received a petition calling for two demands:
- a) Abolish or Reduce the Licence Fee: We call on the Communications Regulator and MLAs to abolish the VSAT licence fee for using Starlink entirely. If a complete abolition is not feasible, we urge you to reduce the fee to a reasonable and proportionate level, not exceeding £180 per year.
 - b) Approve Starlink Domestic Tariffs: We also call on the Communications Regulator to grant regulatory approval for Starlink to offer domestic tariffs in the Falkland Islands. This would prevent residents from being forced to rely on the more expensive global roaming tariffs, making fast and reliable internet access more affordable for everyone.
- 1.2 The petition (and the submissions received from members of the public) emphasise that Starlink provides a great opportunity for the Falkland Islands “to finally move into the 21st century” of enhanced broadband communications. This is a certainly a worthwhile objective and it is true that Starlink offers the potential of more affordable and ubiquitous internet access across the Falkland Islands.
- 1.3 The Select Committee has made clear that it will restrict its work to the specifics of the petitioners’ demands. However, any actions taken in response to these demands could have wide implications, so the committee needs to be mindful of the context in which these requests are being made.
- 1.4 This briefing paper is provided to members of the Select Committee to aid them in gaining an understanding of some of the issues that arise when considering how to respond to this petition. It starts with a review of the legal background, specifically the granting of an exclusive licence and the exemptions that apply for VSAT licences (section 2). It then considers the merits of the two parts of the petition in the light of the legal situation: changing the VSAT licence fee (section 3) and approving Starlink domestic tariffs (section 4).



2 Legal background

Communications Ordinance

- 2.1 The Communications Ordinance 2017 (as amended) ('the Ordinance') is the principal legislation that governs communications and the use of the electromagnetic spectrum (i.e. radio communications). This includes telephony and internet services irrespective of how those services are provided or delivered.
- 2.2 Most of the many powers and responsibilities defined in the Ordinance fall to the Falkland Islands Communications Regulator (the 'Regulator'). When carrying out his functions the Regulator is directed to pursue the electronic communications objectives¹, have regard to the regulatory principles and any other principles that appear to the Regulator to represent 'best practice.'²
- 2.3 When introducing or developing a regulatory or administrative measure the Regulator is obliged by section 9(3) of the Ordinance to publish a document:
- specifying the electronic communications objectives that are advanced by the measure; and
 - demonstrating how the regulatory principles have been complied with.
- 2.4 The effect of this provision is to ensure that the Regulator fully considers all the implications in making any changes to the licences or the licensing regime that governs the provision of, for example, telecommunications and internet services in the Falkland Islands. Inevitably anyone affected, or potentially affected by a change in policy, licences or the licensing regime would look to challenge the policy and reasoning advanced by the Regulator in such a document by way of judicial review or other appropriate dispute resolution mechanism.
- 2.5 The Ordinance requires that the following activities be licensed³:
- Owning an "*electronic communications network*;"
 - Operating an "*electronic communications network*;"
 - Providing "*electronic communications services*;" and

¹ Section 4

² Section 9

³ Section 21



- Importing “*electronic communications apparatus.*”
- 2.6 Each of the terms in quotation marks in the previous paragraph is defined in the Ordinance. In essence these defined terms and the licensing obligations capture the ownership and provision of the equipment necessary to receive the internet, the operation and supply of the internet service as well as the importation of the equipment into the Falkland Islands. These definitions clearly include the services provided by Starlink.
- 2.7 Section 33 of the Ordinance empowers the Regulator to grant licences permitting any of the above activities. Those licences can be granted subject to conditions and those conditions can be varied even after a licence has been granted. However, a licence may be granted “*only in so far as it is compatible with an exclusive licence granted under Part 7.*”
- 2.8 Part 7 of the Ordinance gives the Governor power to grant an exclusive licence to a telecommunications operator to:
- Operate an electronic communications network in the Falkland Islands;
 - Provide electronic communication services
 - Do anything else that requires a licence pursuant to s21 (e.g. import the necessary equipment).
- 2.9 The Ordinance sets out, in Part 7, the terms and objectives of an exclusive licence. Effectively these provisions and the terms of the licence itself seek to strike a fair balance between, on the one hand, the benefits to Falklands consumers resulting from the exclusive licensee being able to be more certain about its income and therefore commit to providing a wide range of services over the longer term and, on the other hand, the risks inherent to consumers of being exploited by a monopoly provider.
- 2.10 The Ordinance and the exclusive licence contain obligations and restrictions on the licensee such as:
- universal service obligations;
 - compliance with appropriate technical standards;



- allocation and adoption of telephone numbers
- the provision of directory information
- price caps;
- provision of accounts and other financial information;
- obligations to subscribers and other consumer protection;
- compliance with key performance indicators;
- obligations with regard to interception and data retention; and
- not being able to change the control of the licensee itself without the Government's consent.

2.11 The universal service obligation obliges the exclusive licensee to provide telephone and internet access to any domestic or business address occupied for more than 6 months in any one year.

2.12 The arrangements give the exclusive licensee certainty when it comes to business and financial planning – important when investing in capital intensive equipment such as satellite earth stations and their network facilities. The arrangements allow it to cross subsidise between services – e.g. the costly and onerous universal obligation, the maintenance of the fixed line and mobile telephony infrastructure and their earth stations. These arrangements give the community and Government certainty in terms of the provision and standard of the infrastructure and with regard to a defined suite of services at capped prices over a long term.

2.13 However, as the community interest with regard to Starlink demonstrates, the principal disadvantages of such arrangements are that they are at risk from disruptive changes in technology and do not permit the community to enjoy such changes when they become available. They will always tend to lag behind better provision available elsewhere especially in larger markets and markets where competing providers look to offer better services as they seek new and additional business.

Exclusive licence

2.14 An exclusive licence was granted to Sure South Atlantic Ltd ('Sure') on 7 April 2017.



2.15 The main terms of the licence are expressed in 41 separate sections – most of which are subdivided into paragraphs and sub-paragraphs and supplemented by four schedules.

2.16 Clause 7 of the exclusive licence sets out activities that are **excluded** from the exclusivity granted in clause 6. Those excluded activities include: *(a) Personal use of VSAT equipment.*

VSAT licences

2.17 The term ‘VSAT’ is not defined in the exclusive licence nor in the Communications Ordinance. However, it is defined in the VSAT Licence Guidance Notes that were issued by the Regulator in 2019: *A VSAT is defined as an earth station with an antenna diameter of less than 4 metres (or having the equivalent surface area circumscribed by the rim of the antenna if not circular in shape).* On this basis, Starlink terminals are VSATs.

2.18 The Guidance Note explains a policy determined by EXCO in 2016 that *Applicants for a non-exclusive Licence would need to demonstrate that the exclusively-licensed arrangements are not adequate. This might be because of specialist technical or scientific requirements, the services are required in an area that falls outside the coverage or universal service obligations of the exclusive Licensee’s network, or because the level of data required cannot be met within the constraints of the exclusive Licence holder’s infrastructure for example.*

2.19 Licence applications need to provide evidence demonstrating that the exclusive Licence arrangements are not adequate. This must include evidence of any engagement between Sure and the Applicant.

2.20 The fee for a VSAT licence was set at £5,400pa. This figure was computed on the basis of the total annual cost of the exclusive operator’s largest commercially realistic, generally available data package, which at that time was £450 per month.



2.21 The justification for this approach was clearly set out in EXCO's Policy Principles as follows: *the Government is satisfied that it is correct that any licence fee should act as a disincentive to operate outside the arrangements set up in the public interest. Accordingly, only those who have a clear need for an extraordinary licence will apply for one. There is no interest in setting a licence fee that makes self-provision only marginally more expensive. In any marginal case the licensing regime must be such that residents are encouraged towards the exclusive provider.*

3 Changing the VSAT licence fee

3.1 The petitioners have called upon the Communications Regulator and MLAs to abolish the fee for a VSAT licence or, failing that, to reduce it to a "reasonable and proportionate level not exceeding £180 per year". They argue that the existing fee places an undue financial burden on residents, hindering their ability to access affordable, high-speed internet; whereas abolishing this fee will democratise internet access, making it more affordable for all residents.

3.2 Section 74 of the Ordinance makes clear that the setting of licence fees is the responsibility of the Governor (rather than the Regulator or the Legislative Assembly). When setting fees, the Governor would be expected to have regard to the electronic communications objectives and regulatory principles specified in the Ordinance, however the Governor is not bound by them in the way that the Regulator is under section 9 of the Ordinance.

3.3 The electronic communications objectives have a complicated and sometimes contradictory impact on the level of VSAT licence fees.

3.4 It is evident that a significant reduction in the VSAT licence fee, such as has been proposed by the petitioners, would facilitate much greater uptake of Starlink services than hitherto, and this could help meet many of the electronic communications objectives established in the Ordinance, for example:

(b) to facilitate effective communication in the Falkland Islands and between the people of the Falkland Islands and the rest of the world;

(e) to support the growth and development of the Falkland Islands' economy;



- (f) to promote investment and innovation in electronic communications networks and services;*
- (o) to provide continued growth in international capacity to support increasing usage levels, so far as economically feasible;*
- (r) to promote innovative services to support the needs of the people of the Falkland Islands; and*
- (s) to promote and support the use of up to date technologies in providing electronic telecommunication services.”*

3.5 However, it is also likely that a reduction in the VSAT licence fee would have a negative impact on other of the electronic communications objectives. As has been evident in other jurisdictions, low VSAT licence fees are likely to encourage mass migration away from Sure’s broadband services, which in turn would undermine its ability to fund its other services and, in particular, to meet its universal service obligations. The following electronic communications objectives could thus be undermined:

- (a) to promote the public interest generally in relation to electronic communications;*
- (f) to promote investment and innovation in electronic communications networks and services;*
- (h) to provide affordable access to high quality networks and carriage services in all regions of the Falkland Islands so far as reasonably practicable;*
- (m) to ensure access to all key electronic communications services;*
- (n) to encourage infrastructure investment into the Falkland Islands.*

3.6 There is a similarly confusing and contradictory picture when considering the regulatory principles in the Ordinance. For example, they state that *“the needs of the people of the Falkland Islands are the paramount consideration”* and that the Regulator must have *“regard to the costs and impact of those measures on affected parties (including consumers, licensees and other undertakings)”*. But there will be winners and losers from any change to VSAT licence fees: lower fees provide immediate benefits to those who use VSATs for internet access, but they risk higher fees for other services and even loss universal service provision in the longer term.



- 3.7 It is important to realise that all of these considerations were analysed when the current VSAT licence fee was set. The conclusion reached by EXCO (see para 2.21) balanced the needs of the exclusive licensee and different consumer groups, and the short-term and long-term development of the communications sector. The presumption should therefore be that the licence fee ought to stay as it is, unless there have been relevant and material changes in the electronic communications environment.
- 3.8 There have been at least three material changes since the current policy was established, each of which might be considered relevant to the matter of the VSAT licence fee:
- Starlink provides a materially different service from the VSAT services that were envisaged in 2016.
 - Sure has amended its broadband packages
 - The unlicensed use of Starlink terminals.

Starlink offers a materially different service

- 3.9 When the VSAT licence fee was set, only geostationary orbit satellites were in operation. The exclusive licence allowed Sure to use collective purchasing to obtain some economies of scale, but it was recognised that not allowing individuals to make personal arrangements could be said to be unlawful. Thus, users were able to obtain their own VSAT licence (to access essentially the same geostationary satellite services), but the price that was set so as not to undermine Sure's collective purchasing power.
- 3.10 Now, however, Starlink, provides a materially different service to that provided by Sure, because it uses a collection of low earth orbit satellites rather than a single geostationary satellite. This allows for lower latency and higher bandwidths.



- 3.11 The fact that Starlink employs an innovative technology which offers users different and potentially more attractive functionality means that the Regulator has already received, and in many cases granted, a small number of VSAT licence applications. For these applicants the marginal utility of the VSAT licence is clearly greater than the licence fee of £5400 per annum. And, of course, the number of applications will rise further if the licence fee is reduced.
- 3.12 But none of this should affect the regulated price of the VSAT licence. The licence fee was set to cover the economic externality (i.e. the cost to the collective of one person withdrawing their broadband service from the Sure network). As the customers most likely to take a VSAT licence are those with the greatest broadband requirements the fee was set to equal the annual revenue from Sure's largest broadband package.
- 3.13 That logic remains valid. The only additional issue created by the new-found popularity of VSAT licences is the increasing importance of the licence fee being re-invested in the collective (so as to internalise the externality). There are various ways to achieve this, for example through a subsidy to Sure or directly to the customers that remain with the exclusive licensee, but perhaps the simplest one would be through an adjustment to the price cap mechanism of £5400 for each Starlink subscription.

Sure has changed its broadband packages and prices

- 3.14 The rationale for the VSAT licence fee was based on the potential loss of revenue to Sure if customers migrated from their largest widely-used broadband package. At the time that package cost £450 per month so the annual licence fee was set at £5400. Today the largest Sure broadband package (other than bespoke arrangements) is the Pro XL which costs £467 per month which would equate to an annual fee of £5604. This is close enough to the current licence fee so as not to justify any change.



The unlicensed use of Starlink

3.15 A major change from 2016 is that self-provision is now technically possible and (absent licence fees) affordable for many islanders. This means that a small, but growing, number of people are choosing to import Starlink terminals and use them without obtaining a licence.

3.16 Unlicensed usage is unlawful, and the Communications Regulator has taken steps to advise the public of this fact and threaten prosecution for those who persist in flouting the law.

Conclusion

3.17 The VSAT licence fee was established so as to protect the rights of individuals to choose an independent communications solution, without undermining the viability of the collective system operated by Sure under an exclusive licence until 31 December 2027. Setting the licence fee at the level of the largest broadband package was designed to achieve this, although for full effect the licence fees raised from VSATs should also be re-invested in the collective system.

3.18 Although there have been some relevant and material changes in the communications environment since the VSAT licence was launched, none of these changes alters the economic calculus that led to the VSAT licence fee being set at £5400 per annum.

3.19 It is undoubtedly correct, as the petitioners have demonstrated, that individual customers, public organisations and private companies would all benefit greatly from obtaining the higher speed and lower latency broadband services provided by Starlink. However, if the benefits are so great, then many of these customers should be willing to pay the VSAT licence fee in order to obtain them.



- 3.20 Lowering the VSAT licence fee would clearly allow more individuals to benefit from enhanced broadband, and this would in turn bring greater economic benefits to the Falkland Islands. However, the migration of customers away from Sure's broadband service will undermine the exclusive licensee's ability to fund other communication services (fixed lines, mobile, radio, TV). This has social and economic consequences: those who can afford Starlink will benefit at the expense of those who cannot afford or who do not require Starlink. It also has legal consequences as FIG could be sued by Sure for breach of its exclusive licence.
- 3.21 It is probable that, if the emergence of Starlink had been foreseen at the time when the exclusive licence was granted and the VSAT licence fee was set, a different regime would have been chosen. This might well have involved a lower VSAT licence fee, but it would also have involved some counterbalancing changes to the exclusive licence.
- 3.22 All parties, however, have to operate within the regime that was established in 2017. Unless amended by agreement, Sure's exclusive licence will not expire until 31 December 2027 at the earliest. Any significant change in the VSAT licence fee before this time risks destabilising the current regime. It would therefore be preferable to review the VSAT licence fee as part of the planning for the next regime that will start on or after 1 January 2028. However, there may be some scope to agree a gradual or partial reduction in the VSAT licence fee as part of FIG's negotiations with Sure in the lead up to that date.



4 Approving Starlink domestic tariffs

- 4.1 The petitioners have also called upon the Communications Regulator to grant regulatory approval for Starlink to offer domestic tariffs in the Falkland Islands. They argue that approving domestic tariffs will significantly reduce costs, making fast and reliable internet access affordable for all residents; this change being essential for promoting a connected and inclusive society.
- 4.2 It is true that VSAT licensees in the Falkland Islands have to use Starlink's international roaming tariff. Starlink is unable to offer a domestic tariff because it does not have a licence to operate in the Falkland Islands. Also the level of Starlink's tariffs (whether domestic or roaming) is determined by its commercial policies, rather than by regulation.
- 4.3 As of today, Starlink has not applied for a licence in the Falkland Islands. Were it to do so, the Communications Regulator would have to consider whether granting such a licence would be in breach of Sure's exclusivity. The Regulator has power to grant a licence only in so far as it is compatible with the exclusive licence (see para 2.7).
- 4.4 Ambiguity arises only because of the exclusion from the exclusive licence of personal use of VSAT equipment (see para 2.16). It could be argued that the explicit exclusion of VSAT equipment from Sure's exclusivity also implies that an equivalent service provider licence could be issued (because the equipment cannot be used with a service being provided by a third party).
- 4.5 A similar regime of personal VSAT terminal licensing was implemented last year in Ascension Island. In that jurisdiction Sure questioned the legality of licensing end users without also licensing the service provider. In response the Ascension Island Government has now licensed Starlink as a service provider, which it could do because Sure does not have an exclusive licence in Ascension.
- 4.6 Using the argument in paragraph 4.4 and the precedent described in paragraph 4.5, the Communications Regulator could agree to issue a licence to Starlink in the Falkland Islands. However, Starlink would first need to apply for such a licence.



4.7 If Starlink were to apply for a licence to operate in the Falkland Islands it is likely (though not certain) that it would establish a domestic tariff at a lower level than the global roaming tariff now being paid by VSAT users. However, experience from other jurisdictions, including Ascension and small island nations in the Pacific, suggests that Starlink would strongly resist any licence conditions that attempt to control the prices that it may charge. Starlink always insists on commercial pricing freedom.

Conclusion

- 4.8 Neither the Communications Regulator nor MLAs have the ability to grant regulatory approval for Starlink to offer domestic tariffs in the Falkland Islands.
- 4.9 The only available power is for the Communications Regulator to grant Starlink a domestic service provider licence, but this can only be done if Starlink applies for such a licence. It also offers no guarantee about the domestic tariffs that Starlink may subsequently charge (although it is likely that Starlink would set domestic tariffs lower than its global roaming rates that are currently used by VSAT licensees).