The Mobile Broadband Group

www.mobilebroadbandgroup.com

Ofcom consultation on 'Spectrum pricing for terrestrial broadcasting'

Response from the Mobile Broadband Group

1. The Mobile Broadband Group ('MBG'), whose members are the UK mobile businesses of EE, Telefonica UK (O2), Three and Vodafone, welcomes the opportunity to respond to Ofcom's consultation on spectrum pricing for terrestrial broadcasting.

2. In 1994, the Radiocommunications Agency published its report 'The Future Management of the Radio Spectrum', which identified that spectrum management tools employed at the time provided little incentive for efficient use and encouraged hoarding.

3. Shortly thereafter, as soon as was legislatively practical, modern spectrum management tools, in particular administrative incentive pricing (AIP) and auctions, were introduced for certain sectors, including private business radio, fixed radio links and cellular networks.

4. In 1997/1998 cellular networks paid in the range of £10.8k-£14.4k per channel, when there were roughly 7m subscribers. Today, cellular networks pay around ten times the '97/'98 fee for each channel at an aggregate cost of £64.5m per annum to the mobile operators. In addition, auctions have raised £25 billion in the process of allocating 3G and 4G spectrum (even at today's low cost of borrowing, this money saves the Government over £500m per annum in debt servicing).

5. Ofcom is now proposing that the AIP is applied to the broadcasters in 2020, some 25 years, a quarter of a century, after the policy was first introduced.

6. Cellular spectrum in the adjacent 900MHz band has cost since 2002 around £350k per annum per MHz; one way of considering this is that over the last ten years broadcasters using the 256MHz of unpaired spectrum between channels 21 and 60[1] have benefited from a relative easement in the region of £1 billion.

[1] Spectrum Pricing for Terrestrial Broadcasting, para A6.2

7. The proposal to defer charging once again to 2020 is significantly at odds with Ofcom's duty to promote fair competition, act in a technologically neutral fashion and to ensure the optimal use of spectrum in the UK.

8. The MBG acknowledges that spectrum clearance and harmonisation work is time consuming and complicated but in finalising policy, Ofcom should consider some broader points:

   a) The link between public service broadcasting obligations and spectrum fees

   b) The impact on AIP calculations on adjacent bands

   c) The effect of AIP policy on competition

The link between public service broadcasting obligations and spectrum fees

9. Traditionally the public service broadcasters have been given 'free' spectrum in exchange for fulfilling public service broadcasting obligations (PSO). This link must be broken.

10. As Ofcom sets out in the consultation document, radio spectrum is just one input of many that broadcasters have to employ in order to create and deliver programming. It so happens that, to date, spectrum has been a convenient bargaining chip but this linkage is no longer fair to other market actors in the content industries, as it results in some platforms receiving a subsidy.

11. First, there needs to be a re-appraisal of the nature of the PSO. As the IPPR said in evidence to the House of Lords Committee on Communications: "I do not think that the BBC aspires to the programmes heights that it does because it is regulated. I do not think that ITV produces the kinds of programmes that it does because it is regulated. The BBC does that and ITV does that because of the way that works for it both commercially and publicly."[2]

12. High quality programming is necessary for commercial success in both the domestic (for commercial PSBs) and international content markets (BBC and commercial PSBs). The extent to which such programming is regarded as an 'obligation' must be rigorously assessed – particularly when the PSBs enjoy the very significant benefit of prominence, that is appearing in a high ranking place on electronic programme guides (EPGs).

13. Secondly, if there is indeed an 'obligation' – a net cost associated with being a PSB, some way other than a spectrum subsidy must be found for funding it. For the commercial PSBs, this may be a matter principally for the shareholders; it is up to them to fund commercial operations in a way that is financially viable, taking all relevant costs into consideration.

14. Having paid out in excess of £25 billion in auction fees, the mobile operators have had to make just this kind of calculation, taking into account the need to develop new services, deploy new infrastructure and add capacity, in addition to paying the spectrum fees.

15. We recognise that the PSBs will (indeed already have) argue that an increase in spectrum fees will reduce the amount of cash available for programme making. However, this is not a zero sum

[2] Para 60, Media Convergence, Report by Select Committee on Communications

game and the PSBs must be subjected to the same financial disciplines as other actors making similar decisions about whether to acquire spectrum and deploy services.

16. In summary, there must be a decoupling of spectrum fees for digital terrestrial television (DTT) and the debate about the nature, value and potential funding of public service broadcasting. As Ofcom itself has cogently argued, spectrum is just one input, along with talent, business rates and other costs. Spectrum should be allocated using up to date spectrum management mechanisms, applying the same principles as for other spectrum users.

The impact on AIP calculations on adjacent bands

17. The MBG is not going into detail on the precise calculations of AIP in the UHF band either for DTT or for cellular mobile.

18. Nevertheless, we feel that there are some important principles on which to found such detailed calculations:

    - spectrum with broadly similar propagation characteristics should attract broadly similar annual fees. If the results from the LCA opportunity cost methodologies deliver something markedly different, this would be a cause for concern.

    - One-off auction fees may be an unreliable guide to annual fees because of the 'one-off' circumstances in which they occur. This may be particularly the case when an annual subsidy to some spectrum users has led to an artificial shortage for spectrum sold at auction. Furthermore, auction bids and fees are made relative to the competitive landscape and resource distribution that exists before the auction. Consequently, they may provide little insight into the value of spectrum *ex post.*

19. In the end, Ofcom should find itself in a position whereby the overall pricing scheme for annual fees has a logic and integrity across a broad range of UHF, VHF and other frequencies.

The effect of AIP policy on competition

20. No-one is predicting the imminent disappearance of linear, digital broadcast terrestrial (DTT) television.

21. However, DTT as a distribution platform faces increasing competition – from satellite and cable in the linear market and from cable, fixed broadband and mobile broadband in the catch up and on-demand markets.

22. Ofcom therefore has to be increasingly conscious of the impact of its spectrum policy on the wider content market. Ofcom must not be placed in a position whereby subsidy to a market actor, or actors, results in services being artificially sustained.

23. The underlying assumption for the proposal that AIP be delayed until 2020 is that broadcasters will have difficulty in migrating to a new technology and platform in that timeframe. However,

Ofcom has not examined the possibility that some content providers could be so marginal that the decision is not whether to migrate but whether to remain in the market at all, taking account of realistic and market set spectrum fees.

24. No platform in today's market is owed a living; all have to fight for their existence by delivering value – economic and/or social – to customers. Ofcom should pursue policies that as far as is practical, create reasonably fair and open competition and that do not pre-determine an outcome.

Conclusion

25. Since the late 1990s, there has been a completely different approach to spectrum management for congested spectrum across the different user groups. On the one hand, some spectrum users such as cellular mobile, private business radio and other mobile technologies have been subject to modern management techniques such as AIP and auctions. The terrestrial broadcasters, on the other hand, have not. The distortions that this has led to are unknowable.

26. In 2007, it was decided that AIP would be introduced in 2014. It is now proposed to defer this until 2020, essentially 'kicking the can down the road' once again. With consumers vastly increasing their use of mobile data, the demand for spectrum is becoming more intense. The current estimate is that more will need to be ready for allocation in this medium term timescale.

27. It is thus essential and equitable that DTT providers are given now the correct signals and incentives to vacate 700 MHz in due course, if they do not intend or have expectations of making better use of it than mobile operators (or any other market actors).

28. Therefore the DTT providers should be placed in the position when they plan their vacation of 700MHz and the consequent reorganisation of the DTT spectrum that they do so in the knowledge that all DTT spectrum will attract an AIP based spectrum fee; nor should DTT operators be receiving financial assistance with re-planning, while they are in receipt of heavily discounted spectrum.

29. The MBG can accept that a glide path is an appropriate way to proceed; a glide path has been used in other sectors where spectrum fees are increasing but the glide path should be starting earlier than 2020. After nearly 20 years of modern spectrum management, it would not be before time.