

## Innovative uses of spectrum: T-Mobile's response

T-Mobile welcomes the opportunity to respond to Ofcom's consultation, "Innovative uses of spectrum".

T-Mobile is concerned that Ofcom's consultation appears inadequate to enable respondents to properly assess its proposals. In particular, there are a number of important areas that Ofcom does not provide sufficient information on for respondents to comment meaningfully. For example:

- there is no attempt at definition for what the term "innovative commercial wireless services" actually means;
- there are no concrete proposals regarding the amount of spectrum that would be licensed in this way; and
- no details of the spectrum to be available for this new licence class have been included – public bodies occupy a large amount and variety of spectrum and hence the indication that licences will only be allocated for spectrum held by public bodies is unhelpful.

Nevertheless, T-Mobile has a number of concerns with Ofcom's proposals as currently framed.

In particular, T-Mobile sees no justification for the creation of a new licence class, and thinks that the framework for the administration of innovation licences is itself ill thought through and flawed. The proposal to create a new licence class could hinder Ofcom's desire for a market-led approach to spectrum access. In particular this proposal could impact on the reforms of the public-sector spectrum holdings and the desire to make them tradable. T-Mobile would propose that Ofcom review the circumstances in which it is intended that such licences are needed and re-think its approach. If the aim is to allow short commercial trials then the licence needs to be focused and limited to the exact duration, bandwidth and area to be covered by the trial in question.

<i>Question 1. Do you agree with our proposal to create a new innovation licence class?</i>
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T-Mobile has great concerns with this proposal and sees no need for the creation of a new licence class.

Before turning to these concerns in more detail, it should be recalled that Ofcom is under a duty to be transparent and accountable in its actions and that the purpose of consultations is to acquire meaningful and informed responses. Ofcom must either be more transparent about the purpose of proposing this new class of licences, or provide significantly more information regarding the suggested demand for this new class of licence that Ofcom has identified.

In particular, T-Mobile is concerned that Ofcom is proposing innovation licences as a means of:

- amending the existing T&D licence regime; and

- recovering spectrum from public bodies that do not use it and are reluctant to administer it.

As noted above, Ofcom has provided little indication of what would qualify as an “innovative commercial wireless service”. T&D licences already provide a means by which new services can be tested and developed.

The proposal that innovation licences would be of indefinite duration appears peculiar and otherwise inconsistent with Ofcom’s spectrum policy. Coupled with the manner in which such licences are proposed to be applied for, the new class appears like a very cheap way of acquiring spectrum for new services.

- If these licences are to encourage innovation they should be short term only and with a feasible upgrade path to alternative spectrum at the end of that period. The alternative spectrum should be identified at the time of licensing.
- If spectrum is available for commercial services then this should be offered to the market in an open and transparent manner.
- This new licence class would cause the expectation that spectrum will be made available for a ‘full licence’ if commercial viability is achieved. Once an organisation has a successful service with paying customers, will Ofcom be in the position to revoke the licence or not address interference complaints?
- The proposal to create a new licence class could hinder Ofcom’s desire for a market-led approach to spectrum access. In particular this proposal could impact on the reforms of the public-sector spectrum holdings and making them tradable.
- If it is possible that the licences could be indefinite then they should be auctioned in the usual way. At a minimum Ofcom should issue a statement to the effect that they propose to issue a particular licence and if others are interested in that spectrum then there should be an auction; if not then it could be awarded without auction.

Furthermore, no details have been provided on the spectrum that this new licence class would apply to, other than that it would relate to spectrum currently held by public bodies. However, if Ofcom is in effect proposing to bring unused spectrum back in to the market, then the creation of a new class of licence is manifestly the wrong way to do this and is wholly inconsistent with Ofcom’s own policy.

Instead, Ofcom should address directly the issue of spectrum currently unused in the frequencies in which it proposes to grant such innovation licences. Ofcom should either identify the spectrum that is unused and useful and auction it/incentivise spectrum trading, or leave the spectrum in the hands of its current users and encourage them to sublicense it.

It appears to T-Mobile that Ofcom’s proposals are potentially an incoherent stop gap to recycling unused public spectrum. Moreover, while they may achieve the use of currently vacant spectrum in the short term, they manifestly fail to address the long term use of such spectrum.

If the relevant spectrum is in fact to be granted on an indefinite basis, then, consistent with Ofcom's current policy, that spectrum should be allocated by auction. Not only is such an approach the only method that is consistent with Ofcom's announced policy on spectrum allocation, but it is the only means by which Ofcom can avoid discriminating against other commercial users of spectrum and promote competition.

- Existing licence holders such as T-Mobile were required to engage in a competitive process to acquire new spectrum, be it a beauty contest (historically) or auction (consistent with Ofcom's current policy). To grant licences to companies on a near cost-free basis for an indefinite duration is highly discriminatory. For example T-Mobile may wish to bid for and introduce new services on 2.6 GHz spectrum. These services may well be innovative. How does Ofcom reconcile the requirement for T-Mobile to participate in an auction in such circumstances / or use T&D licences for other trials, with the proposed availability of indefinite, almost free, licences for other operators?
- It is inconsistent with Ofcom's duty to promote competition to discriminate in this fashion, since it creates an uneven playing field where some operators may obtain spectrum on radically different terms to others. Given the importance of spectrum in the provision of mobile telecommunications services, allocation must be made on an efficient basis (consistent with Ofcom's duties under s3 of the Communications Act), which – as Ofcom itself advocates – can only properly be done through market mechanisms.
- Similarly, Ofcom's proposed approach is contrary to the principle of service and technology neutrality. In adopting a policy that manifestly favours the undefined "innovative", Ofcom would be explicitly creating a bias against existing services and technologies.

*Question 2. Do you agree with our proposal to grant innovation licences on a first-come-first-served basis?*

T-Mobile does not agree that the licences should be granted on a first-come-first-served basis. If spectrum is available for commercial services then this should be offered to the market in an open and transparent manner as we explain in our response to Question 1.

Again, T-Mobile is concerned by the lack of detail contained in Ofcom's consultation. For example, this question seems to imply that there are a fixed number of licences which in time will run out, but it is unclear whether Ofcom will grant multiple licences for a particular band.

Similarly, Ofcom state that it expects that demand for this new licence will not exceed supply. However, it is difficult to comment without details of the spectrum to be included in this licence class or the inadequacies of the current T&D licence system which lie behind the alleged demand. No details have been provided in the consultation or the impact analysis to justify that the spectrum will be in excess supply. In fact no details have been provided on the spectrum to be included in this licence class in respect of:

- the frequency bands that this licence class will apply to;
- the amount of spectrum to be included in the licence;
- size of area covered by the licence

It follows that the information provided by Ofcom is not sufficient for respondents to gauge the impact of Ofcom's proposals. Hence the responses to this consultation are unlikely to equip Ofcom with the information it requires to undertake a proper impact analysis.

Lastly, T-Mobile is concerned that there appears to be nothing to stop an organisation applying for the entire available spectrum at a fixed fee. Equally, Ofcom does not address the danger of an organisation hoarding all the spectrum. T-Mobile submits that Ofcom needs to fully reconsider and properly detail the basis on which it proposes to treat applications and grant spectrum.

***Question 3. Do you agree with our proposal that innovation licences be service and technology neutral?***

T-Mobile notes that the proposed licence class is in itself neither service nor technology neutral, since the basis on which Ofcom currently proposes to grant such licences discriminates against existing licence holders and the technologies and services they already propose, or may launch in the future.

***Question 4. Do you agree with our proposal that innovation licences should include a "non-interference-non protected" licence condition?***

If Ofcom does proceed with this new licence class then this condition is required.

***Question 5. Do you agree with our proposal that, in general, innovation licences have an indefinite duration?***

T-Mobile can see no justification for the licences to have an indefinite duration. The consultation states that:

"We expect that organisations using innovation licences will often wish to migrate to use spectrum licences that offer greater security of tenure and rights to protection from interference. As such, we would expect that innovation licences will often only be needed for a short period of time."

If Ofcom does not foresee that such licences will be required for anything other than a short period of time then there appears no reason to grant these on an indefinite basis. First, it is inconsistent with the terms of many existing spectrum licences. Second, it creates an expectation in the licence holder that they have security of tenure in the spectrum where they are launching their new 'innovative' service. However, Ofcom does not appear to have fully considered the consequences of this.

Ofcom should set a limit on the maximum licence duration of one year (which should be sufficient to trial a service following earlier testing under a T&D licence), extendable in defined circumstances and subject to limitations – and must address the issue of what spectrum these commercial services migrate to following their initial launch.

*Question 6. Do you agree with our proposal that innovation licences have no initial period?*

See response to Question 5.

*Question 7. Do you agree with our proposal that innovation licences have a minimum notice period for variation or revocation on spectrum-management grounds of one year?*

See response to Question 5.

*Question 8. Do you agree with our proposals for varying or revoking innovation licences during the minimum notice period?*

See response to Question 5.

*Question 9. Do you agree with our proposal to allow only outright total transfers of innovation licences?*

Allowing transfers implies that the licences are for more than commercial trial purposes. Transfers cannot be justified other than possibly in the case of one company acquiring another holding the licence.

T-Mobile would agree that, in principle, only outright total trades are allowed in order to facilitate acquisitions of companies. Nevertheless, if Ofcom does not expect such licences to be granted other than “for a short period of time” then it should properly detail the basis on which it expects spectrum trading to be relevant and the utility of a licence for short term use in this context.

*Question 10. Do you agree with our proposal to charge a fixed fee of £2,000 per innovation licence per year?*

The consultation states that:

“the spectrum used by innovation licensees, which we are proposing to grant on a first come first served basis, and not by auction or beauty contest, will likely be in excess supply, as we explained in paragraph 4.18. The opportunity cost of this use would

therefore likely be low or zero. This suggests that we should set a licence fee that that only covers our administrative costs.”

However, Ofcom have provided no details to justify its assertion that the spectrum will be in excess supply. In fact no details have been provided on the spectrum to be included in this licence class:

- the frequency bands that this licence class will apply to;
- the amount of spectrum to be included in the licence;
- size of area covered by the licence

There appears to be nothing to stop an organisation applying for the entire available spectrum at a fixed fee of £2000. This is not economically efficient and it conflicts with Ofcom’s duties regarding the efficient use of spectrum.

If Ofcom does proceed with this new licence class, the fee should reflect the amount, frequency band, and size of area to be covered and it should be clear that it does in fact cover all administrative costs, including any costs of ensuring that there is no interference caused by licensees.

*T-Mobile comments on the impact analysis*

Licensing options

- It is not clear that a single new licence is substantially less onerous compared with bespoke licences
- See also our response to Q1

Granting innovation licences

- Ofcom has not presented sufficient evidence to justify its statements that supply will exceed demand and that therefore first come first served is the most appropriate method for granting licences
- See also our response to Q2

Licence duration

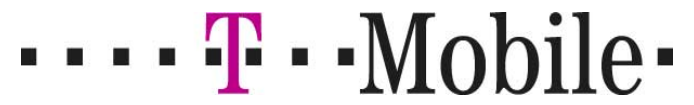
- T-Mobile does agree that low cost licences for potentially unknown amounts of spectrum in unknown bands should be considered with no end date
- Given the purpose of these licences they should be short term.
- See also our response to Q5

Initial period and minimum licence period

- This section needs to consider the maximum notice period as well as the minimum.
- See also our response to Q5

Trading

- Full trading of the licence should be the only trade permitted.



- See also our response to Q9

#### Licence fees

- The fee should reflect the amount, frequency band, and size of area to be covered.
- See also our response to Q10

T-Mobile (UK)  
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