



**Digital Dividend Review: Band Manager Award Consultation Response.**

The Institute of Broadcast Sound welcomes the opportunity to respond to this consultation and wishes to bring to OFCOM's attention the continuing excellent service the current band manager, JFMG Ltd, is providing to the PMSE industry and other spectrum users. It is our view that this company must be given every consideration in allowing it to continue in the role of band manager.

Our response will take the form of a narrative addressing the points which we consider to be of particular importance to our members rather than answering the individual questions as set out in the consultation.

By virtue of the principal type of operational activity in which our members are engaged, we shall limit our response to the parts of the spectrum normally referred to as UHF bands IV & V. We recognise that the new band manager will have responsibility for many other spectrum bands.

In principal we accept OFCOM's proposal that the selection of a future band manager should be by means of a "beauty contest". However, we would re-order the selection criteria by giving primary importance to a future band manager's operational ability, then their understanding of PMSE users and their requirements and finally their promotion of efficient use of the spectrum. We believe this would service the PMSE industry more effectively while also meeting OFCOM's requirements for the role of band manager. When considering the band manager's actual license we note that OFCOM reserves the right to intervene should the recipient not meet OFCOM's spectrum access objectives. We would suggest that intervention should also occur if the manager fails to meet the need of end users, i.e. PMSE. We note that in the consultation there is currently not a requirement for the new band manager to "police" the spectrum for which the manager is responsible. OFCOM has been made aware by the Professional User Group that there exists a quantity of "unlicensed" use of the current spectrum available for PMSE activity. For the new band manager's role to be seen as fair and effective for all there needs to be included in the new license a requirement that the manager pursues and apprehends unlicensed users of the spectrum under its control with a view to prosecution. Failing this the manager should have direct access to the appropriate branch within OFCOM who are currently responsible for pursuing and prosecuting illegal use of the spectrum. This will lead to a much better assessment of the amount of true PMSE activity and bring more revenue to the band manager thus mitigating the need for AIP levels to be set unreasonably high at its introduction.

We accept the OFCOM proposal to award a single package of spectrum to the successful band manager but, before that award is made, OFCOM must clearly define exactly what

spectrum is being awarded. This is now particularly important in the light of recent developments concerning channel 69. Hitherto this channel was to be included in the spectrum award to the band manager. There is now considerable doubt surrounding continued PMSE access to this channel within the UK arising from moves within Europe. It is vitally important that OFCOM comes forward quickly with proposals to meet the continuing need of the current channel 69 users for alternative interference free, UK-wide spectrum. This is essential for the continued operation of UK broadcasters' news gathering and the large number of independent freelance operators who service broadcasters' many other programme making requirements.

We take issue with the OFCOM statement that the new band manager will help PMSE users with a transition to a "market-based approach" for future spectrum access. The Professional User Group in all its discussions with OFCOM has been at pains to point out that this will simply not happen, due to the nature of the PMSE industry. We are at a loss to know what OFCOM thinks will have changed for the PMSE industry in the 10 – year period that they are allowing for this move to a market based approach. We also do not understand how the 10 year period has been arrived at. PMSE will continue well beyond this 10 year window that OFCOM has indicated in its consultation documents. If major UK broadcasters have licenses to operate running through until 2026 then they will require PMSE services throughout this period and beyond. Similarly, we do not understand the thinking behind the requirement for the manager to meet reasonable PMSE demands from users for 10 years. There will still be demand after this period so what happens after 10 years? There must be a clear and unequivocal definition of the OFCOM term "fair, reasonable and non-discriminatory terms" which also appears to only last for 10 years according to the consultation document.

It is understood and accepted that in granting a license to a new band manager OFCOM will make a charge for that license based on AIP, and that the band manager will be able to recover this cost from revenue generated from PMSE users in the form of separate licenses. A most important point in all this is the fundamental ability of the PMSE industry to afford any such new licenses. It should be remembered that, at the outset of discussions with OFCOM, the Professional User Group made it very clear to OFCOM that it would be virtually impossible for their members' to pass on significantly higher license fees to individual programme makers and clients . Recent economic events will exacerbate this even more so. Therefore, when setting the AIP for the band manager's license, OFCOM must take account of the industry's ability to pay. Failure to do so will inevitably lead to increases in unlicensed activity, or possible market failure, which is in no one's interest. Similarly, we do not consider the OFCOM idea that, the AIP structure should reflect areas of peak activity in the pricing at all workable or acceptable. A PMSE user, be they a large organization or a single operator, needs to be able to plan ahead and part of that process includes careful budgeting and cost analysis. If the band manager is forced to keep adjusting license fees because of demand and levels of PMSE activity, it will lead to chaos for the industry in not being able to budget ahead reliably. It is, of course, recognised by the PMSE industry that there will be changes in pricing. The current position where a single licence can cover a freelance sound recordist working in the field, and at the same time a hire company with many dozens of wireless microphone

channels is clearly going to change. However, the idea of “opportunity pricing” based on what others might have been prepared to pay for the spectrum had they won it at auction is not appropriate for PMSE. The industry needs fixed pricing benchmarks that are seen as fair and reasonable and related to the ability to pay, rather than an academic approach based on something that did not happen, but might have done in some hypothetical scenario. The idea of this pricing mechanism being applied to PMSE over time will inevitably lead to an increase in unlicensed use as operators feel they are being priced out of the legitimate market.

In a previous consultation response we highlighted our concerns in relation to the OFCOM proposals for cognitive devices to access the interleaved spectrum. We reiterate again the inconsistency in OFCOM’s proposal that these, as yet unproven, devices will have free unlicensed access to the same spectrum in which PMSE has to pay for access. Before any such device is given spectrum access it must be able to demonstrate to the satisfaction of all interested parties (DTT and the PMSE community) that it will not introduce interference to the already established and licensed users of this spectrum.

Bearing in mind our reservations and observations on this consultation we look forward to the second consultation on this subject that OFCOM will present to the industry later this winter.

John Sullivan  
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