

**DISCLOSURE OF WIRELESS TELEGRAPHY LICENCE
INFORMATION ON RADIO FREQUENCY AND
ASSIGNMENT USE**

A consultation document

January 2002

1. EXECUTIVE SUMMARY

- 1.1 This consultation document concerns a proposal by the Radiocommunications Agency (The Agency), acting on behalf of the Secretary of State, to publish more information about the licensed use of radio.
- 1.2 The Government is committed to securing greater openness in the public sector. Currently most licensing data is held in confidence. There are a number of recent developments, which have led the Agency to re-examine its current policy. These include:
- i. The Government's intention to be more open about the information it holds;
 - ii. The recommendation of the Stewart Report¹ on the safety of mobile communications, and notably the recommendation to provide a national public database of base stations;
 - iii. The requirements of the European Union (EU) Telecommunications Licensing Directive to be open and transparent about the award of licences;
 - iv. The proposals in the new EU package of measures for Electronic Communications Directives and the Spectrum Decision;
 - v. Interests from major radio network operators to have more data for engineering reasons, particularly as many now "self-assign" frequencies at station sites within national allocations;
 - vi. The proposed move to electronic licensing and potential online assignment; and
 - vii. The implementation of spectrum trading as foreshadowed in the White Paper "A New Future for Communications" will require publication of more information about spectrum use to facilitate the development of a secondary market.
- 1.3 This consultation document seeks views from users of the radio spectrum and others on the implications of a possible change in policy on disclosure of information on the use of the radio spectrum.

¹ The report of the Expert Group on Mobile Phones chaired by Sir William Stewart

- 1.4 The legal background is outlined in Part 3. Issues relating to the kind of data that may be appropriate for disclosure is addressed in Part 4.
- 1.5 The Agency recognises that the disclosure of licensing data may raise some concerns, but considers that these must be balanced against the wider public interest issues and other arguments in favour of greater disclosure. Parts 5 to 8 examine the issues for specific radio sectors, and the areas (like security) where disclosure may not be appropriate.
- 1.6 Your views on this subject are welcomed, before the Agency makes recommendations to Ministers. Specific questions are posed at the end of Part 4 (types of data which might be disclosed), 5 (private networks), Part 6 (public systems including broadcasting) and Part 7 (other services).
- 1.7 Responses to this consultation should be sent no later than **12 April 2002**. Please send your views to the following address:

Paul Redwin
Licensing Policy Unit
Radiocommunications Agency
10B/20B
Wyndham House
189 Marsh Wall
London
E14 9SX
Or, alternatively, electronically to: paul.redwin@ra.gsi.gov.uk

- 1.8 Any comments or complaints about the conduct of this consultation should be addressed to:

Julia Fraser
Radiocommunications Agency
9Y/14B

Wyndham House

189 Marsh Wall

London,

E14 9SX

Or, alternatively, electronically to: julia.fraser@ra.gsi.gov.uk.

1.9 It is anticipated that the findings of the consultation exercise will be ready for publication by **7 June 2002**.

Publication of responses

1.10 Respondents to this consultation should note that in the interest of open government:

- Unless confidentiality is expressly requested, individual responses will be placed in the public domain in printed or electronic form, together with the names and contact details of authors. Respondents are requested to make it very clear if they wish to keep some or all of their response confidential;
- Unconditional permission to publish responses will be assumed unless the author expressly states otherwise;
- Any copyright attached to responses will be assumed to have been relinquished unless it is expressly reserved; and
- The provisions of the Data Protection Act will apply to information in electronic form, and to certain manual filing systems.

2. Background

The Radiocommunications Agency is coming under increasing pressure to publish more information about the licensed use of the radio spectrum. The main drivers are:

2.1 *Open Government*

2.1.1 The Government is committed to securing greater openness in the public sector, so that all parts of Government are made accountable when dealing with customers. To this end the Government introduced the “Code of Practice on Access to Government Information 1994”. The forthcoming implementation of the Freedom of Information Act 2000, which will replace the Code, and will place all of the public sector under statutory openness requirements.

2.1.2 While the Agency is fully committed to the principle of openness, the Agency recognises that this needs to be balanced against the requirement for some information to be kept confidential.

2.2 *Mobile Phones and Health*

2.2.1 Amongst the recommendations in its Report to Government, the Independent Expert Group on Mobile Phones (IEGMP) chaired by Sir William Stewart recommended that the Government should maintain a national database of cellular base stations. The Government tasked the Agency to action this. Moreover, the Stewart Group recommended that this information should be readily accessible by the public and held in such a form that it would be easy to identify and use, for example, all base stations within a defined geographical area belonging to cellular operators.

2.2.2 The Stewart Group also recommended that an independent audit of base stations be carried out to determine that exposures are below the public

maximum exposure level set by the International Commission on Non-Ionising Radiation Protection (ICNIRP). The current focus of the audit is at schools with base stations located on their premises. All results from the audit are published on the Agency's website at www.radio.gov.uk.

2.2.3 Moreover, this information should also be readily available to the public, and held in such a form that it is easy to identify and use. For example, it might show details such as all base stations within a defined geographical area belonging to cellular operators.

2.2.4 With the voluntary co-operation of the mobile telephone cellular operators, the Agency has produced a mapping software database called "Sitefinder" on its website to indicate the location and some other details of cellular transmitters. Details shown on Sitefinder include the following:

- Operator;
- Type of transmission;
- Height of antenna;
- Frequency usage;
- Transmitter Power; and
- Maximum licensed power.

The Agency will be considering the case to extend the Sitefinder database to include other types of transmitters. This consultation exercise is a necessary step towards achieving this.

2.3 *European Issues*

2.3.1 Article 9 of the EU Licensing Directive (97/13 EC) directs Member States that they should grant individual licences through open and transparent procedures.

2.3.2 The EU Commission's 1999 Communications Review and the subsequent draft Electronic Communication Framework and Authorisation Directives, together with the Spectrum Decision, all emphasise the need for public

authorities to be open, transparent, impartial and proportionate when conducting their business.

2.4 *Industry Views*

2.4.1 The Federation of the Electronics Industry (FEI) has requested that radio network operators should have access to more frequency/ licensing data. This will enable them to perform useful engineering and frequency planning evaluations, which in turn will improve the available spectrum. This has been supported by other trade organisations that have been assisting the Agency through one of its consultative committees to consider these issues.

2.5 *E-Government*

2.5.1 The Agency is in the development stage of implementing a programme of work for transactional electronic service delivery including e-licensing, site clearance case processing and interference complaints. These projects will inevitably raise the question of what kind of data will need to be released into the public domain for these services to work as efficiently as possible.

2.5.2 Spectrum trading, when this becomes possible, will need a certain amount of information to be in the public domain in the same way that trading in any open market requires information to be available in the public domain to potential buyers. Generally in markets, potential buyers need to know at least a) what is available or may be available if the right offer were made, and b) how to forward an offer to buy or lease to the current holder. Potential buyers may also want other information such as names and addresses. Potential sellers will need to gauge interest in, and advertise, their surplus assignments but these are not necessarily tasks in which the Agency should have an involvement. The issues involved with spectrum trading will be covered in a future consultation as foreshadowed in paragraph 2.7.6 of the White Paper "A New Future for Communications".

Agency Initiatives

- 2.6.1 The Agency is considering plans to publish an industry database on frequency and assignments for the radio industry, which will give certain information about individual assignments.
- 2.6.2 This information would be aimed principally at the radio industry due to the nature of the radio engineering data that it will contain, and is expected to assist the functioning of a market in spectrum. For the general public, the Agency is considering providing more information similar to that on the Sitefinder database in a format that is easy to understand. The need to have very different types of presentation is due to the fact that the sort of data required by the radio industry would be incomprehensible to most of the general public.
- 2.6.3 However, it is recognised that some assignment information will need to remain confidential for reasons of national security, law enforcement and commercial sensitivity.

3. Legal Issues

- 3.1 The Secretary of State issues licences to use radio spectrum under the terms of the Wireless Telegraphy Act 1949 as amended. Although Wireless Telegraphy legislation does not cover disclosure issues, it has always been the Agency's practice to exercise the general law of confidentiality in relation to licensing data, except where there has been specific and proper reason not to do so. The general law of confidentiality (properly called the "equitable obligation of confidence") is based on rules wholly contained in case law. The current expectation of licensees or prospective licensees is that information pertaining to licences is treated as a matter of confidence by the Secretary of State (which in practice implies the Agency, and to any organisation to whom licensing may be delegated to act on the Secretary of State's behalf). Because of this, the Agency is consulting widely about the proposal to change the position and publish more assignment details.

3.2 The Data Protection Act 1998 applies to information about identifiable individuals which is held on computer or in certain structured manual files. Under that Act “processing”² of data must comply with the Data Protection Act principles except where one of the exemptions conferred by the Act is available to a data controller.

The Act does not prohibit the disclosure of such information to third parties, but regulates the circumstances in which it can take place through an enforceable code of good practice rules known as data protection principles. Among other things, the principles require personal data to be processed fairly and lawfully and for limited purposes and to be kept securely. Exemptions from some of the Act’s requirements, which would otherwise prevent disclosure, are available in certain limited circumstances.

3.3 Legal advice suggests that a change in the Agency’s position on general disclosure requires the undertaking of a wide consultation prior to seeking Ministerial approval. This would also need to be followed by publicity to existing licensees and changes to the Agency’s guidance notes and application forms. Some legislative change may also be necessary.

3.4 The questions in the later parts of this document address the areas where changes to the law might be contemplated.

4. Types of data which might be disclosed

4.1 The Agency has been discussing these issues with a small representative group from one of its consultative committees (Mobile Steering Committee Sub-Group on frequency and assignment), and most interest has concerned:

² The definition of “processing” is extremely wide and covers virtually anything done with personal data. “Processing” in relation to information or data means obtaining, recording or holding the information or data or carrying out any operation or set of operations on the information or data including:

- organisation, adaptation or alteration of the information or data;
- retrieval, consultation or use of the information or data;
- disclosure of the information or data by transmission or otherwise making available; or
- alignment, combination, blocking, erasure or destruction of the information or data.

- i. The frequency and assignment details of individual operators; and
 - ii. The location and details of individual permanent base stations and mast sites.

- 4.2 Under the powers stemming from the EU Licensing Directive, the award of frequencies for public operators is now already published for new services awarded by competition. However, the majority of our potential licensees approach the Agency for our published licence products on a “first come-first served” basis, and the Agency has always regarded frequency assignment details as a private matter between itself and the applicant, or its agents. The first issue is whether such information should continue to remain in confidence, or be disclosed.

- 4.3 The Agency takes the view that for its range of “pre-packaged” licence products, all applicants share use of the same frequencies (which are already published in our guidance notes), and so there is no value in further disclosure of the names of the licensees against these frequencies. Many of these “pre-packaged” licences (e.g. amateur, CB, self-assigned paging), have licensees who are individuals to whom the Data Protection Act applies. However, some individuals operate powerful transmitters, which have the potential to impact on the rights of others, and the case for some disclosure of information about such sites and frequencies is looked at in Part 7.

- 4.4 The case for possible disclosure of data about licences for private business systems is complex.

- 4.5 The main arguments often expressed against disclosure are:
 - i. The specific frequencies awarded are a matter of business competitiveness or security. Many of our customers are commercial rivals of each other, and the disclosure of names and frequencies may aid eavesdropping and provide some insight into their business plans or provide commercial disadvantage;

- ii. Many radio systems are designed for the protection of persons (e.g. security guards), properties and public places, or for protecting the transport of loads of high commercial value (e.g. bank notes, tobacco and alcohol). Disclosure might aid criminals bent on circumventing such security measures.

4.6 The main arguments expressed in favour of disclosure are:

- i. A greater expectation of openness and transparency both nationally and in the European context;
- ii. To help resolve interference issues. Disclosure may help neighbouring networks to resolve difficulties with each other;
- iii. Engineering knowledge to assist self-assignment, where that is permitted;
- iv. The potential to encourage mast sharing and other network infrastructure (this also reflects another recommendation of the Stewart report);
- v. The Government is committed, subject to changes to EC law that are included in the draft Framework Directive, to introduce spectrum trading as a means of promoting more optimal use of the radio spectrum. The provision of at least a minimum amount of information is a prerequisite for any market and information above the minimum may assist a market in functioning to best effect. Moreover, the draft Directive requires that transfers of spectrum assignments should be made public.

Question 1 Do you agree (subject to any safeguards on security and commercial sensitivity issues) that frequency assignment data should be open information? Give reasons for your answer.

Question 2 Do you think there should be industry information tools of assignments and frequencies made available? What type of information would be a) beneficial to you/ your organisation; b) lead to better use of the spectrum; and c) enhance competition?

5. Possible way forward

5.1 The Agency believes that there are four distinct groups of radio user that have varying degrees of need for transparent data, and conditions associated with allowing that data to be more transparent. The four groups are:

- i. Private network operators;
- ii. Public network operators;
- iii. Licensees for individual services; and
- iv. Government and emergency services.

Private Network Operators

5.2 The Agency is of the opinion that information on private network operators (i.e. frequency and assignment data) should be made public. The private network sector can be divided into two groups. The first group give private safety and security services. With this group there will be the inevitable concerns about the need for confidentiality to protect security operations of both persons and property. The Agency proposes to disclose information revealing the identification (i.e. names and addresses) on this group only with the explicit agreement of those operators concerned. The second group which consist of all the other private network operators (e.g. PBR, fixed-links, satellite operators), whose information would be disclosed by a proposed two-way transparency mechanism as stated in paragraph 5.4. This mechanism will hopefully ensure all-round transparency in the use of the radio spectrum. Also as mentioned in paragraph 2.5.2 above for any open market to function, including a spectrum market, a certain amount of information will need to be in the public domain. This will be addressed in the future spectrum trading consultation.

5.3 The Agency proposes that information on frequency and assignment details on private network operators will be included on any future industry information tools that are developed.

- 5.4 The Agency believes that it would be possible to publish an industry database of sites and frequencies, which did not directly name the operator, but instead used generic descriptions such as “private business system”. The Agency propose that against each record on the industry database there will be a “licensee identifying code”, which will be the unique identifier of the subject of the record. If an operator wanted to identify another private system operator, the enquirer would make an application to the Agency (via an electronic enquiry form: stating the “licensee identifying code”) and requesting disclosure of the identity of a specific operator in a specific location (i.e. names, addresses and other contact details). The Agency would inform the operator of the identity of the enquirer, thereby ensuring transparency in both directions and deterring criminal or spurious “fishing expeditions”. The Agency may have to consider charging an access fee and possibly an enquiry fee to meet costs. But such disclosure would help meet public concerns and provide engineering information, while still providing a degree of security.
- 5.5 In a trading environment it might be possible for this approach to be extended so that any potential purchaser could forward an offer to purchase using the licensee identifying code, but this, like other spectrum trading matters, will be the subject of a future consultation on Spectrum Trading.
- 5.6 The Agency is also considering the future provision of a CD-ROM service, to give radio network operators and other radio sector providers further up to date national frequency and assignment information.

Question 3 ***Would you support not disclosing names and contact information on the industry database, but allowing a direct enquiry method on the lines outlined above in paragraph 5.4? Give reasons for your answer .***

Question 4 ***If you do not support the direct enquiry method, would you support full disclosure of information on the industry database, or is there another system that you would like to see employed?***

Question 5 *Do you agree that private network operators should be divided into two groups, with the associated differing restrictions on what information is disclosed? Give reasons for your answer.*

Question 6 *Would you support (in the future) the Radiocommunications Agency offering a CD-ROM subscription service for frequency and assignment data? If yes, what benefits do you envisage would be gained over the proposed industry information database?*

6. Issues for public systems

Public Network Operators

- 6.1 The general tenor of the new European Communications Review and the proposed Directives is very much in favour of transparency, which will require the Agency to publish names and addresses of public network operators and the award of licences to them.
- 6.2 For new licences awarded by competitive process, there is already much information published on the award process, and there is a wider anticipation of openness arising from the provision of services to the public. The new Sitefinder facility has greatly enhanced information about assignment for the public operators.
- 6.3 OFTEL, the BBC, the ITC and the Radio Authority already disclose a range of engineering information on their respective websites. The broadcasting organisations, in particular, publish comprehensive data about sites, frequency usage and related assignment details, some of which is also reproduced in hard copy form.
- 6.4 As announced in the Communications White Paper , published in December 2000, it is proposed that the Agency joins with Oftel, the Radio Authority, the ITC and the Broadcasting Standards Commission to form a single regulator -

The Office of Communications (Ofcom). One of the duties of Ofcom will be to comply with the principles of transparency, accountability, proportionality and consistency. There will be a need for common practice across the organisation for all regulatory activity in dealing with the disclosure of information.

- 6.5 Operators of any public service may want to differentiate their public service from the infrastructure that supports it (this equally applies to private radio systems supporting public services such as electricity supply or transport). The Agency's Mobile Steering Consultative Committee has expressed its wish to have site-related information about all transmitters located nationally. This information would cover broadcasting and public network transmitters as well as some of the private networks (covered in the previous section).
- 6.6 Licences in the UK are awarded by comparative selection, auction or on a first come first served basis. Public communication systems in the UK are awarded on the basis of optimising competition and choice, however some operators are concerned that the revelation of certain details about their systems will undermine their competitive edge. The main area of concern appears to be in relation to future plans.
- 6.7 However, the Government strongly encourages simple mast or site sharing, which is sometimes known either as co-location or facility sharing, in order to minimise the environmental impact of networks. It is hoped that disclosure of frequency and site information will help facilitate network operators to co-locate where feasible to do so. Disclosure of frequency and site information is expected to help encourage sharing without compromising competitiveness.
- 6.8 Any individual proposal for Network Infrastructure Sharing (NIS) would need to be assessed on its own merits and its consequences for consumers, which would be subject to general competition law.

Question 7 *Do you agree there is a need for more disclosure of information about public networks? Give reasons for your answer.*

7. Issues for other types of radio licence

Individual Licensees

- 7.1 **Aeronautical:** The Civil Aviation Authority (CAA) is already required, under current legislation and International protocols, to publish some data about aircraft and ground station radio use, for safety reasons, to the aeronautical community. The Agency would like to apply the same criteria, as outlined in paragraph 5.4 above, to the disclosure of aeronautical frequency assignment information. However, where there are security implications these must take precedence.
- 7.2 **Maritime:** Maritime radio already publishes some data about ships radio use to HM Coastguard for safety reasons, and to the International Telecommunications Union (ITU) for inclusion on its register. The Agency would like to apply the same criteria as outlined in paragraph 5.4 above to the disclosure of maritime frequency assignment information.

Question 8 *Do you support further disclosure, as outlined in paragraph 7.1 & 7.2 for aeronautical and maritime, in addition to disclosures already made for safety reasons? Give reasons for your answer.*

- 7.3 **Amateur and CB:** There are no benefits in disclosing CB licensing information as all users share the same spectrum on a transient basis. However there may be a case in the future to include on a industry database the location of powerful transmitters that belong to members of the public, for example radio amateurs who may have a impact on the rights of others. Before any of these types of transmitters can be included, the Agency would need to further define what constitutes a “powerful transmitter”, as well as consulting those licensees and interested parties further.

7.4. **Government and Emergency Services**

7.4.1 Government intends that all its public secure services (including the MOD) and emergency services (including the police, fire and ambulance services) should wherever possible incorporate more openness and transparency. However, where there are security implications these must take precedence. The Agency proposes to continue to be the conduit between operators of Government and emergency services and other operators wanting to contact them.

8. **Introducing Change**

8.1 Public Notification

8.1.1 If the Agency decided to disclose names and assignment details into the public domain, the Agency would need to ensure that disclosure complied with the Act and that all application forms were amended to reflect the Data Protection Act's fair processing code.

8.2 Changes in the use of personal data must, ordinarily, be notified to the Information Commissioner's Office, and notification must be in advance of any changes taking place. Details relating to the notification regime are to be found in Part III of the Data Protection Act 1998, which are supported by Regulations made by the Secretary of State under powers conferred by the Act³.

³ The Data Protection (Notification and Notification Fees) Regulations 2000 (S.I. 2000/188).

9. Summary of questions

- Q.1 Do you think agree (subject to any safeguards on security and commercial sensitivity issues) that frequency and assignment data should be open information? Give reasons for your answer.*
- Q.2 Do you think there should be industry information tools of assignments and frequencies should be made available? What types of information would be a) beneficial to you/your organisation; b) lead to better use of the spectrum; and c) enhance competition?*
- Q.3 Would you support not disclosing names and contact information on the industry database, but allowing a direct enquiry method on the lines outlined in paragraph 5.4? Give reasons for your answer.*
- Q.4 If you do not support the direct enquiry method, would you support full disclosure of information on the industry database, or is there another system that you would like to see employed?*
- Q.5 Do you agree that private network operators should be divided into two groups, with the associated differing restrictions on what information is disclosed? Give reasons for your answer.*
- Q.6 Would you support (in the future) the Radiocommunications Agency offering a CD-ROM subscription service for frequency and assignment data? If yes, what benefits do you envisage would be gained over the industry database?*
- Q.7 Do you agree there is a need for more disclosure of information about public networks? Give reasons for your answer.*
- Q.8 Do you support further disclosure as outlined in paragraphs 7.1 & 7.2, for aeronautical and maritime, in addition to disclosures already made for safety reasons? Give reasons for your answer.*

