
Setting licence fees for 412 MHz

Proposal to apply Administered Incentive Pricing for the 412–414 MHz, paired with 422–424 MHz, frequency bands

CONSULTATION:

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1. Overview

This document consults on our proposed annual licence fee for the 2 x 2 MHz of spectrum at 412–414 MHz paired with 422–424 MHz, which is currently held by Arqiva and Airwave.

We propose that the fee for the 2 x 2 MHz be set at £1,584,000 per year.

We auctioned the 412 MHz spectrum in October 2006. Arqiva were awarded all available lots and was granted a national, indefinite licence with a 15-year initial licence term. Arqiva then traded the licence in 2008 to include Airwave as a co-licensee. The initial 15-year licence period comes to an end in October 2021, from which date an annual licence fee becomes payable.

We usually set fees for spectrum licences in one of two ways. If there is excess demand for the spectrum (i.e. there is more demand for those frequencies than there is supply) we set the fee by reference to the market value of the spectrum. We call this an AIP fee (administered incentive pricing). If there is not excess demand, we set a fee which reflects our spectrum management costs for those frequencies. This policy is intended to give best effect to our statutory duties, including our duty to secure the optimal use of spectrum.

We have assessed whether there is likely to be excess demand for this spectrum in future, and have come to the provisional view that this is likely. We are therefore proposing to set an AIP fee. Our assessment is that Business Radio users are likely to be the highest value alternative users, and therefore this fee should reflect the opportunity cost to Business Radio users of not being able to use the spectrum. We have also considered whether, in light of our statutory duties, fees should be set not at the market value we identify but at some other level. Our provisional conclusion is that setting fees based on our estimate of the market value of the relevant spectrum will best meet our statutory duties.

Taking all the above into account, we propose that the fee for 412 MHz spectrum be set at **£396,000 per MHz per year**, therefore totaling £1,584,000 per year for the 2 x 2 MHz. We are also consulting on draft regulations to give effect to these proposed fees.

We invite any comments on the proposals in this document by 5pm on **16 July 2021**. We expect to publish our conclusions later this year (and in advance of 5 October).

What we are proposing – in brief

We expect excess demand for this spectrum in future, therefore, consistent with our general approach to setting spectrum fees, we are proposing to set a fee for this spectrum which reflects the market value for the band, i.e. the opportunity cost of the use of the spectrum.

Business Radio is likely to be the highest value alternative user for this spectrum, and as such we are proposing to set the fee at the same level as the Business Radio UK-wide fee for UHF 1 (410–450 MHz) and 2 (450–470 MHz), which we consider to be a conservative estimate of the market value of this spectrum. Our proposed fee for this band is therefore **£396,000 per MHz per year**

The overview section in this document is a simplified high-level summary only. The proposals we are consulting on and our reasoning are set out in the full document.

2. Introduction and legal framework

Background

- 2.1 Arqiva and Airwave concurrently hold a licence which authorises them to use 2 x 2 MHz of spectrum at 412–414 MHz paired with 422–424 MHz. In this document, we refer to this as Arqiva and Airwave's 412 MHz spectrum.
- 2.2 We auctioned the 412 MHz spectrum on a technology and service neutral basis in October 2006. The single-round sealed bid auction was for 4 MHz of spectrum in four lots; Arqiva won all four lots with a bid of £1,500,025¹ and was granted a national licence.
- 2.3 Arqiva traded the licence in 2008 to include Airwave as a co-licensee. Airwave was acquired by Motorola Solutions in 2016.
- 2.4 The 412 MHz spectrum licence states that, from 5 October 2021, fees shall become payable in accordance with regulations set by Ofcom. This consultation considers, and makes proposals on, the level of fee that should apply to this spectrum.

Legal framework

Ofcom's power to set fees

- 2.5 Under section 12 of the Wireless Telegraphy Act 2006 (the "**Wireless Telegraphy Act**"), Ofcom has power to require licensees to pay fees to Ofcom on the grant of a licence and subsequently. The requirement to pay fees at times after the grant of a licence must be imposed by way of regulations made by Ofcom. The timing of the fee payment must be set out in the regulations, and the amount of the fee can be prescribed in the regulations, or alternatively the regulations may provide for the amount to be determined by Ofcom in accordance with the regulations.
- 2.6 Section 12(5) of the Wireless Telegraphy Act provides that, where a licence has been awarded as part of an auction process (as was the case for the 412 MHz spectrum), fees cannot ordinarily be charged for that licence. This is however subject to section 12(6) of the Wireless Telegraphy Act which provides that fees may be payable, even in respect of auctioned spectrum, in specific cases. This includes where provision has been included in the licence with the consent of the holder of that licence for fees to apply. Paragraph 8 of Arqiva and Airwave's licence for the 412 MHz spectrum provides that, on or after 5 October 2021, annual fees will become payable in respect of that licence (failing which Ofcom may revoke the licence).
- 2.7 Section 13 of the Wireless Telegraphy Act provides for Ofcom to set fees at an amount that is higher than the cost to us of carrying out our radio spectrum functions. This power may

¹ Ofcom, *412 MHz award – Publication under regulation 26(a) of the Wireless Telegraphy (Licence Award)(No.2) Regulations 2006*, 6 October 2006, https://www.ofcom.org.uk/data/assets/pdf_file/0017/109124/412-award-details-bids.pdf

be exercised if we think fit in the light (in particular) of the matters to which we must have regard under section 3 of the Wireless Telegraphy Act.

- 2.8 Section 122 of the Wireless Telegraphy Act is a general provision about matters relating to Ofcom's powers to make statutory instruments (including fees regulations under section 12 of that Act). It includes a requirement that where we are proposing to make regulations we must publish a notice setting out the general effect of the regulations and give a period of at least one month within which representations on the proposed regulations may be made to us.
- 2.9 The legal framework for the setting of fees derives from the Communications Act 2003 (the "**Communications Act**") and the Wireless Telegraphy Act. We set out below our statutory duties under the Communications Act and the Wireless Telegraphy Act.

The duties imposed by the Communications Act

- 2.10 Section 3 of the Communications Act sets out Ofcom's general duties including its principal duty:
- to further the interests of citizens in relation to communications matters; and
 - to further the interests of consumers in relevant markets, where appropriate by promoting competition.
- 2.11 In carrying out its functions, section 3(2) provides that Ofcom is required, amongst other things, to secure the optimal use for wireless telegraphy of the electromagnetic spectrum, the availability throughout the UK of a wide range of electronic communication services and the availability throughout the UK of a wide range of television and radio services.
- 2.12 Section 3(3) of the Communications Act provides that in performing its duties, Ofcom must in all cases have regard to the principles of transparency, accountability, proportionality and consistency, as well as ensuring that its actions are targeted only at cases in which action is needed.
- 2.13 Section 3(4) of the Communications Act requires Ofcom, in performing its duties, to have regard to a number of factors as appropriate, including the desirability of promoting competition, encouraging investment and innovation in relevant markets, encouraging the availability and use of high speed data transfer services throughout the UK, the different interests of persons living in rural and in urban areas and the different needs and interests of everyone who may wish to use the spectrum for wireless telegraphy.
- 2.14 In performing our duty under section 3 of furthering the interests of consumers, we must have regard, in particular, to the interests of those consumers in respect of choice, price, quality of service and value for money.
- 2.15 Section 4 of the Communications Act requires Ofcom to act in accordance with six requirements when carrying out certain specified functions, including our functions under the Wireless Telegraphy Act. These include a requirement to promote competition in relation to the provision of electronic communications networks and electronic communications services, and to take account of the desirability of carrying out its

functions in a manner which, so far as practicable, does not favour one form of electronic communications network, electronic communications service or associated facility, or one means of providing these, over another.

The duties imposed by the Wireless Telegraphy Act

2.16 Section 3 of the Wireless Telegraphy Act imposes a number of further duties relating to spectrum management. Amongst other things, in carrying out its spectrum functions Ofcom is required to have regard to:

- a) the extent to which spectrum is available for use, or further use, for wireless telegraphy;
- b) the demand for use of the spectrum for wireless telegraphy; and
- c) the demand that is likely to arise in future for the use of the spectrum for wireless telegraphy.

2.17 Section 3 of the Wireless Telegraphy Act also requires Ofcom to have regard to the desirability of promoting:

- a) the efficient management and use of the part of the electromagnetic spectrum available for wireless telegraphy;
- b) the economic and other benefits that may arise from the use of wireless telegraphy;
- c) the development of innovative services; and
- d) competition in the provision of electronic communications services.

3. Approach to determining annual licence fees

Background

- 3.1 Our policy is to set licence fees by reference to the value of the spectrum (known as administered incentive pricing (AIP) fees), for spectrum that is expected to be in excess demand, or to charge cost-based fees where AIP is not appropriate. Following the convention of more recent documents, we typically refer to ALFs (annual licence fees) hereafter and any references to AIP should be read as equivalent to ALF.
- 3.2 In order to meet Ofcom's general duties, we set out our general policy position for setting spectrum fees in our Strategic Review of Spectrum Pricing (the "SRSP") in 2010,² which we said would be used in future as a guide to setting ALFs. We explained that the purpose of AIP was to set fees for spectrum holdings to provide long term signals reflecting the value of the spectrum (based on its opportunity cost) in order to promote the optimal use of spectrum.³
- 3.3 Setting fees on this basis promotes the optimal use of spectrum since there is an incentive for users to sell spectrum to alternative users where the next best alternative is more valuable than the current use.
- 3.4 Our SRSP also considered the interplay between setting spectrum fees and spectrum trading in delivering optimal use of the spectrum. We concluded that many secondary markets are unlikely to be sufficiently effective to promote the optimal use of the spectrum without the additional signal from AIP based fees, and that such fees are likely to continue to be needed to play a role complementary to spectrum trading for most licence sectors.⁴
- 3.5 In instances where there is not an opportunity cost to other users, we set fees that reflect our spectrum management costs in line with our framework for setting cost-based fees, published in 2014.⁵

Structure of our assessment

- 3.6 Following the approach set out in the SRSP, the first step of our assessment is to consider whether we expect there to be excess demand for the 412 MHz spectrum from existing and/or feasible alternative users, in future, if cost-based fees were applied.⁶

² Ofcom, *Strategic Review of Spectrum Pricing: The revised Framework for Spectrum Pricing*, 17 December 2010, https://www.ofcom.org.uk/data/assets/pdf_file/0024/42909/srsp-statement.pdf

³ This is AIP Principle 1 in our SRSP

⁴ This is AIP Principle 4 in our SRSP

⁵ Ofcom, *Spectrum Pricing: A framework for setting cost based fees*, 17 March 2014, https://www.ofcom.org.uk/data/assets/pdf_file/0018/50247/cbfstatement.pdf

⁶ This is AIP Principle 2 in our SRSP

- 3.7 For the reasons set out in the following section, in this case we provisionally consider that there would be excess demand for the 412 MHz spectrum, and as such, an AIP based fee is the most appropriate type of fee to charge.
- 3.8 Therefore, following the framework we set out in the SRSP, we then seek to estimate the market value of the 412 MHz spectrum, i.e. the opportunity cost of the use of the spectrum, and the corresponding annual licence fee.
- 3.9 We then consider what the likely impact of setting fees at that level would be and whether, in light of our statutory duties, there is any reason for us to set fees at a different level.

Do we expect there to be excess demand for 412 MHz, in future?

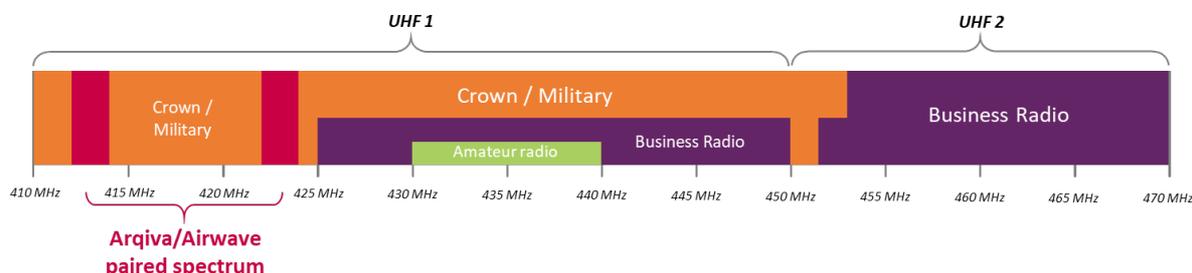
- 3.10 As set out above, the first step of our assessment is to consider whether we expect there to be excess demand for the 412 MHz spectrum from existing and/or feasible alternative users in the future. For the reasons set out below, our provisional conclusion is that there would be excess demand for this spectrum in some geographical areas, and that there may also be excess demand for this spectrum on a national basis in the future. We are therefore proposing to set an AIP based fee.
- 3.11 We have considered where likely demand for this band could come from. The most likely alternative use for the band is Business Radio. We currently offer Business Radio licences in both UHF 1 (410–450 MHz) and UHF 2 (450–470 MHz). Many industry sectors use Business Radio, for example transport, security, manufacturing and utilities (water, gas and electricity industries).
- 3.12 One possible use for this spectrum could be LTE technology.⁷ However, our provisional view is that the 412 MHz band could not be used for nationwide LTE deployment because of geographic restrictions in the top 2 MHz of this spectrum. These same restrictions would apply for any user operating LTE anywhere in the UHF 1 band.⁸ On this basis we do not therefore consider that nationwide LTE could be a feasible alternative use for the band.
- 3.13 We consider that the 412 MHz spectrum is substitutable for Business Radio in the UHF 1 or 2 bands. Existing Business Radio equipment is able to operate using 412 MHz spectrum and we do not consider that there are any technical reasons why, hypothetically, a Business Radio user would prefer a licence elsewhere in UHF 1 or 2 compared to in the 412 MHz band. We also note that the 412 MHz spectrum is currently licensed by Ofcom for offshore Business Radio, for example on oil rigs and wind farms (Arqiva and Airwave's licence only covers terrestrial use within the UK).

⁷ Long-Term Evolution (LTE) is a standard for wireless broadband communication for mobile devices and data terminals and can support a wider range of data services than narrowband technologies. The smallest LTE channel size is currently 1.4 MHz. LTE band 87 covers 410–415/422–427 MHz and LTE band 88 covers 412–417/411–427.

⁸ Ofcom, *Frequency sharing arrangements between civil and military services*, 12 January 2017, https://www.ofcom.org.uk/_data/assets/pdf_file/0020/103295/fat-civil-military-sharing-arrangements.pdf

3.14 We charge Crown users an AIP based fee for using the adjacent and nearby bands.⁹

Figure 1: Simplified band plan for 410–470 MHz, showing UHF 1 and 2 division, Business Radio bands, Arqiva/Airwave paired spectrum and Crown use



3.15 Ofcom currently offers a range of Business Radio licences. Some of these provide licensees with dedicated frequencies over a prescribed coverage area, whilst others require licensees to share frequencies with other users.¹⁰ The fees for Business Radio licences reflect the different characteristics of these licences, with the Technically Assigned and Area Defined licences (which are not shared with other users) being significantly more expensive than the other Business Radio licences on offer. All of Ofcom's Business Radio licences are flexible in terms of licensed coverage area and can accommodate different channel sizes (subject to spectrum being available).

3.16 We have not identified any alternative demand for the 412 MHz spectrum other than for Business Radio, and consider that Business Radio users (and, in particular, those users that are looking for a national licence with dedicated frequencies) are likely to be the next highest value alternative users of the 412 MHz spectrum.

3.17 We note that, in the majority of UK geographical areas, any Business Radio user seeking a localised (rather than national/UK-wide) licence can already be accommodated in the existing UHF 1 and 2 Business Radio bands, including those looking for exclusive assignments. However, in some areas of the country (particularly in large cities), the UHF 1 and 2 Business Radio bands are congested, to the extent that we reject some licence applications, particularly those looking for exclusive channels. We have been told by some users that they no longer make applications for licences in UHF 1 or 2 in some areas as they know these will be rejected. Some of these requests could in theory be accommodated in the 412 MHz band, and therefore there is an opportunity cost for these users of Arqiva and Airwave holding the licence in these areas due to this excess demand.

3.18 We are also mindful of the potential for excess demand for this spectrum in future on a national (rather than localised) basis. The fact that there is congestion in the UHF 1 and 2 bands in some areas of the country means that, without the surrender/revocation of any of

⁹ Ofcom, *Review of Public Sector Spectrum Release (PSSR): Recommendations to Government on the setting of a revised PSSR target*, 2 March 2016, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/518307/Advice_to_Government - CLEAN - PSSR Target Mar2.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/518307/Advice_to_Government_-_CLEAN_-_PSSR_Target_Mar2.pdf)

¹⁰ Ofcom, "Business Radio FAQs", 11 August 2020, <https://www.ofcom.org.uk/manage-your-licence/radiocommunication-licences/business-radio/guidance-for-licensees/business-radio-faqs>

the existing Business Radio licences or Arqiva/Airwave's 412 MHz licence,¹¹ Ofcom is currently unable to issue any further national (exclusive) Business Radio licences. At present, there are 12 such licences in force, assigned to 5 different licensees, and, whilst we have not refused any applications for a further national Business Radio licence, we are mindful of the increasing demand for Business Radio use that we have witnessed in recent years (and discussed in detail from paragraph 3.30 below). Taking account of all of the above, we expect that there may also be excess demand for this spectrum on a national basis in the future.

- 3.19 Our provisional view, consistent with the SRSP, is that it is appropriate to charge an AIP based fee given our expectations regarding excess demand in the band in future, which means there is an opportunity cost to Arqiva and Airwave holding a national licence for the 412 MHz spectrum.

Question 1: Do you agree with our provisional conclusion that there is likely to be excess demand for the 412MHz band in future and that therefore an AIP fee is appropriate? Please provide any evidence to support your position.

Question 2: Do you agree with our provisional conclusion that UK-wide exclusive Business Radio is the highest value alternative use for the 412MHz band? Please provide any evidence to support your position.

Provisional assessment of market value

Introduction

- 3.20 Having provisionally concluded that there is likely to be excess demand for 412MHz spectrum in future, and that an AIP fee is therefore appropriate, the next stage in our assessment is to make a calculation of market value for the band (i.e. the opportunity cost of the use of the spectrum) upon which this fee should be based.¹² Ascertaining the market value for spectrum is not a complete science, particularly where (as in this case) the market value may vary by geographic location.

The opportunity cost to other users of Arqiva and Airwave holding the 412 MHz spectrum

- 3.21 The opportunity cost is the price that would emerge in a well-functioning market and reflects the value of spectrum to the best alternative use or user that is denied access to it. If fees reflect opportunity costs, users have an incentive to hold only the spectrum that they value as highly as the best alternative user or use. In this way, fees that reflect the

¹¹ We note that Arqiva and Airwave's 412 MHz licence runs for an indefinite period of time, but subject to terms enabling revocation by Ofcom in particular circumstances (which are common to a large number of wireless telegraphy licences).

¹² This is AIP Methodology 2 in our SRSP.

opportunity cost have an effect similar to the prices that would emerge in a well-functioning spectrum market.

- 3.22 The opportunity cost to other users of Arqiva and Airwave holding the 412 MHz band should reflect the next highest value of that spectrum to an organisation(s) other than Arqiva and Airwave.
- 3.23 As set out in the section above, our provisional view is that the highest value alternative use case for this band is likely to come from Business Radio users. Therefore, the opportunity cost of the spectrum will be its value to Business Radio users.

Our provisional view is that the UK-wide Business Radio fees provide the best available proxy for the market value of 412 MHz

- 3.24 We have provisionally concluded that the highest value alternative use case for the 412 MHz band is likely to come from Business Radio users, and that therefore the opportunity cost of the spectrum will be its value to Business Radio users. Subsequently, considering how much these users currently pay for access to similar bands appears to be an appropriate starting point for determining an ALF fee.
- 3.25 We have an established fee regime for Business Radio licence products in UHF 1 and UHF 2 bands, which are classed as 'high usage bands'.¹³ Our Business Radio UK-wide fee for these high usage bands (£9,900 per 2 x 12.5 kHz) is an AIP-based fee which reflects marginal opportunity costs.¹⁴ We note that these fees have not been increased since they were set.¹⁵
- 3.26 Under the current Business Radio fee regime, we charge licensees £9,900 per 2 x 12.5 kHz for a dedicated (i.e., exclusive), national channel.¹⁶ Applicants can also apply for defined area licences which cover smaller geographic areas, such as individual nations or grid squares. The cost of these individual nations or grid squares varies depending on whether they are high, medium or low population. For example, grid square TQa, which includes

¹³ The Wireless Telegraphy (Licence Charges) Regulations 2020, <https://www.legislation.gov.uk/uksi/2020/1068/made/data.pdf>

¹⁴ In 1996, the Radiocommunications Agency (RA), the predecessor regulator to Ofcom, commissioned a study by NERA and Smith System Engineering Limited (<https://webarchive.nationalarchives.gov.uk/20080714195625/http://www.ofcom.org.uk/static/archive/ra/topics/spectrum-price/documents/smith/smith1.htm>) looking into the use of spectrum pricing. Whilst this study preceded Ofcom's SRSP, the NERA Smith approach recommended setting prices according to the opportunity cost of spectrum (and therefore consistent with the SRSP). The initial recommendation by NERA Smith gave a valuation of £22,000 for a national 2 x 12.5 kHz channel. This was revised downwards by government to £9,900 per 2 x 12.5 kHz channel.

¹⁵ We last reviewed the pricing regime for Business Radio in 2007 (*Business Radio Trading & Liberalisation: A statement on measures to liberalise and simplify Business Radio licensing including measures to extend trading*, 10 January 2007, https://www.ofcom.org.uk/data/assets/pdf_file/0019/41347/brstatement.pdf) as part of a broader project to liberalise Business Radio products. As part of this work we introduced a new pricing structure to reflect the simplified licence class structure, including by adding a new geographical pricing tier into the licences based on population, resulting in the three tiered pricing structure we currently have for different grid squares (high population, medium population and low population). As part of this review, we decided to continue to apply the overall AIP rate of £9,900 per 2 x 12.5 kHz channel for nationwide licences (*Modifications to Spectrum Pricing*, 10 January 2007, Section 3, https://www.ofcom.org.uk/data/assets/pdf_file/0020/41519/statement.pdf)

¹⁶ The Wireless Telegraphy (Licence Charges) Regulations 2020, <https://www.legislation.gov.uk/uksi/2020/1068/made/data.pdf>

London, is the most expensive grid square.¹⁷ The cost of the national licence equals the sum of the cost of the defined area licences covering all of the grid squares. Similarly, the cost of acquiring an individual licence for each of the four nations is the same as for a UK-wide licence.

- 3.27 Our provisional view is that, as both the UK-wide Business Radio licences and 412 MHz licence provide licensees with exclusive use of a national channel, the UK-wide Business Radio fee of £9,900 per 2 x 12.5 kHz provides an appropriate starting point for calculating the value of the 412 MHz spectrum. We have however considered whether there could be reasons that the market value of the 412 MHz spectrum could be higher or lower than this.
- 3.28 In the SRSP, we set out the principle that when deciding at what level we should set an AIP fee, we should consider the risks of setting the AIP fee too high or too low in light of the specific circumstances and of our statutory duties.¹⁸ Consistent with our approach to other ALFs, on balance we consider that the risk of inefficiency from spectrum lying fallow if the ALF for 412 MHz spectrum was set above the market value is greater than the risk that efficiency-improving changes would not occur if the ALF was too low.¹⁹ Given our statutory duty to promote the optimal use of spectrum, we therefore propose to take a conservative approach to interpreting the evidence on market price/opportunity cost of spectrum.
- 3.29 We note that, on the basis of revealed preference, existing Business Radio users must value the spectrum as least as highly as the current Business Radio fees – if they valued the spectrum by less than the amount they currently pay for it, they would be better off handing their licences back and not incurring the fees.
- 3.30 We also note that demand for Business Radio licences has increased over the period since 2007²⁰ as shown in the chart below, with the total number of co-ordinated licences (i.e. Technically Assigned and Area Defined) increasing by 22% from 13,951 to 17,008.²¹ This trend suggests that the value of this spectrum will be at least as high as when these Business Radio fees were last reviewed.²² In our 2017 Strategic Review of UHF 1 and 2 we also said we expected to continue to see growth of Business Radio in UHF 1 and UHF 2, with voice remaining the dominant application, but some users increasingly using data services.²³

¹⁷ Ofcom, Business Radio Licence Fee Guide, Figure 1, page 4,

https://www.ofcom.org.uk/data/assets/pdf_file/0022/36823/nonexcelguide.pdf

¹⁸ Paragraph 4.344, AIP Principle 9, SRSP statement.

¹⁹ See Annex 5 of our August 2014 consultation on ALF for 900 and 1800 MHz spectrum,

https://www.ofcom.org.uk/data/assets/pdf_file/0030/76926/annexes_1-7.pdf

²⁰ With the exception of the number of technically assigned licences in the UHF 1 band which has decreased slightly.

²¹ The number of light licences (Simple UK, Simple Site and Suppliers Light licences) increased from 11,887 to 26,510 (an increase of 123%) over the same period. Taking these together with coordinated licences the total number of Business Radio licences has increased by 68% since 2007.

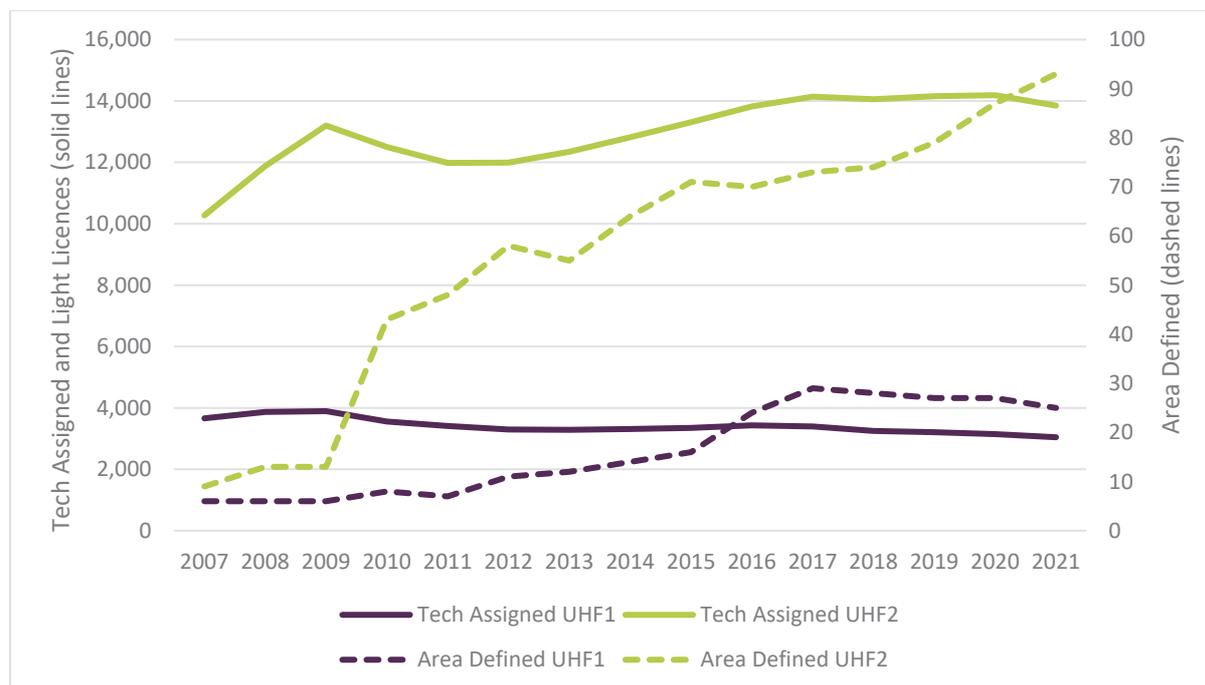
²² *Business Radio Trading & Liberalisation: A statement on measures to liberalise and simplify Business Radio licensing including measures to extend trading*, 10 January 2007,

https://www.ofcom.org.uk/data/assets/pdf_file/0019/41347/brstatement.pdf

²³ *Strategic Review of UHF Band 1 and 2*, 25 May 2017,

https://www.ofcom.org.uk/data/assets/pdf_file/0017/102185/Statement-on-strategic-review-of-UHF-Band-1-and-Band-2.pdf

Figure 2: Volumes of Business Radio licences on 1 April each year



- 3.31 On the other hand, we note that this Business Radio fee suggests that the 412 MHz spectrum is more valuable than is implied by the result of the 2006 auction.²⁴ However, we are cautious about placing too much weight on a 15 year old sealed-bid auction when assessing the forward-looking market value of that spectrum.
- 3.32 Considering all these factors in the round, we do not believe there is a strong reason to adjust the fee for 412 MHz upwards or downwards from the starting point of the UK-wide Business Radio fee. We consider that, on the basis of revealed preference, this is likely to be a conservative estimate of market value. We also note that this means that the ALF charged for the 412 MHz spectrum would be equal to the fees charged in the adjacent bands for technically substitutable spectrum. We consider this to be consistent with the efficient management of spectrum, and to be consistent with our objective (as stated in the SRSP) of providing users with a long-term signal of the value of their spectrum.
- 3.33 We are therefore proposing to use the existing Business Radio UK wide fee for UHF 1 and 2, which are categorised as ‘high usage’ Business Radio bands (£9,900 per 2 x 12.5 kHz) as

²⁴ In October 2006, Arqiva won 2x2MHz of 412MHz spectrum in the auction for £1,500,025. We note that, adjusting for inflation (using the most recent CPI values of 109.4 for March 2021 and 80.6 for October 2006), on an annualized basis (assuming a 5.75% annualisation rate as used in our June 2019 Statement on ALF for 3.4GHz and 3.6GHz spectrum (paragraph 3.47)) this is equivalent to £731.69 per 2 x 12.5 kHz. We note that this figure will be a slight understatement as the 5.75% annualisation rate is based in a 20-year period, while the initial licence period in this case is 15 years. However, even accounting for that, this is considerably lower than the £9900 per 2 x 12.5 kHz set for Business Radio fees.

the basis for AIP for 412 MHz spectrum. **The proposed fee for 412 MHz spectrum is therefore £396,000 per MHz²⁵ per year.²⁶**

Question 3: Do you agree with our provisional conclusion to set the annual licence fee for 412 MHz equal to the Business Radio UK-wide fee for high usage bands? Please provide any evidence to support your position.

²⁵ For the purposes of the Proposed Regulations at Annex 6, this fee is expressed as £9,900 per 2 x 12.5 kHz channel. This equates however to a fee of £396,000 per MHz and, for the purposes of the consultation more generally, we refer to the proposed fee level as £396,000 per MHz.

²⁶ Consistent with our approach to setting annual licence fees for spectrum (other than mobile spectrum), the Business Radio fee is fixed in nominal terms and not adjusted for inflation. We propose to adopt the same approach and keep the 412 MHz annual licence fee fixed in nominal terms.

4. Assessment of ALFs in light of our statutory duties

Introduction

- 4.1 When we exercise our powers in relation to spectrum, as explained in Section 2 above, a number of statutory duties are relevant. These include:
- a) Section 3(1) of the Communications Act sets out Ofcom's principal duty to further the interests of citizens and consumers in relevant markets;
 - b) By virtue of Ofcom's principal duty, Ofcom is required by section 3(2) of the Communications Act to secure the optimal use for wireless telegraphy of the electromagnetic spectrum. Section 3(4)(f) also requires Ofcom, in performing its duties, to have regard to the different needs and interests, so far as the use of the electromagnetic spectrum for wireless telegraphy is concerned, of all persons who may wish to make use of it; and
 - c) Section 4(2) of the Communications Act provides that Ofcom must have regard to six requirements in carrying out any of its functions relating to the management of radio spectrum, including:
 - i) to promote competition;
 - ii) to promote the interests of all members of the public in the UK; and
 - iii) to take account of the desirability of our carrying out our functions in a way which so far as practicable does not favour one form of electronic communications or one means of making them available.
- 4.2 As described in paragraphs 3.24–3.33 above, and taking account of these statutory duties, our provisional view is that it is appropriate and proportionate to set fees based on the market value of Arqiva/Airwave's 412 MHz spectrum, and that the market value of that spectrum is at least £9,900 per 2 x 12.5 kHz. This is based on consideration of the opportunity cost to other users as the measure of market value and, as set out in paragraph 3.32 above, is likely to be a conservative value given how Business Radio fees have been set. This corresponds to an ALF of £396,000 per MHz per annum.
- 4.3 ALFs which are based on the market value of the spectrum are consistent with the policy approach to setting spectrum licence fees which we set out in the SRSP, which was in itself designed to meet Ofcom's statutory duties when setting such fees.
- 4.4 In this section, we consider in more detail whether setting the ALF for 412 MHz spectrum based on our assessment of market value of that spectrum is appropriate in light of our statutory duties.

Structure of assessment

- 4.5 We explain in further detail below our general policy (as set out in the SRSP) on why spectrum fees should be set by reference to market value. We then consider the specific effects of ALFs being set by reference to a nationwide market value of £9,900 per 2 x 12.5 kHz on:
- a) securing the optimal use of spectrum;
 - b) citizens and consumers;
 - c) competition; and
 - d) investment.

Our policy on setting spectrum fees by reference to market value

4.6 As explained in Section 3, we published the SRSP in December 2010 in order to give best effect to our statutory duties when setting spectrum licence fees.²⁷ This sets out our policy of setting licence fees by reference to the value of the spectrum (known as administered incentive pricing (AIP) fees) for spectrum that is expected to be in excess demand, and charging cost-based fees where AIP is not appropriate. The SRSP provides the policy framework for how we develop AIP fee proposals, as well as how and when we undertake pricing reviews.

4.7 In the SRSP we explained that:

*"[AIP] promotes optimal use by ensuring that users face a signal of opportunity cost...imposed on society by their use and therefore take it into account in their business and investment decisions, just as they do for other resources that they employ, and so have incentives to use it efficiently in the provision of downstream services."*²⁸

"The rationale for AIP may be simply stated. If the price charged for any limited resource, whether it is energy, raw materials, land or spectrum, does not reflect its opportunity cost, there will be less incentive to use it efficiently, it will not be available for alternative uses or other users that could provide additional value and society will be worse off. For example, faced with a choice between investing in more advanced equipment and using more spectrum businesses will naturally tend to choose the option with lower costs. If the cost of spectrum reflects its true opportunity cost, and the cost of equipment also reflects its true value (as would be expected in a well-functioning market for equipment) then business will make the

²⁷ Ofcom, *Strategic Review of Spectrum Pricing: The revised Framework for Spectrum Pricing – Statement*, 17 December 2010, https://www.ofcom.org.uk/data/assets/pdf_file/0024/42909/srsp-statement.pdf

²⁸ Ofcom, *Strategic Review of Spectrum Pricing: The revised Framework for Spectrum Pricing – Consultation*, 29 March 2010, paragraph 1.12, https://www.ofcom.org.uk/data/assets/pdf_file/0021/36804/srsp_condoc.pdf

trade-off between investment in spectrum and equipment in a way that maximises benefits generated from their use.”²⁹

4.8 In assessing the AIP principle on spectrum trading,³⁰ we further commented that:

“We also note that some commercial and public spectrum users may be less responsive to trading than to AIP...More generally, when strong pressures are put on managers to reduce or contain their operating budgets, but less importance is placed on realizing untapped revenue sources such as might arise from selling spectrum, AIP can provide a more powerful incentive for licensees to use spectrum efficiently than the possibility of selling unwanted spectrum.”³¹

4.9 In assessing the AIP principle in relation to securing wider social value,³² we commented that:

“...subsidising one input such as spectrum creates the risk that investment choices will be distorted, such that the users provided with a subsidy will tend, over time, to retain more spectrum than they need, increasing the opportunity cost resulting from excluding other uses and users;

An input subsidy on its own does not guarantee that the input will be used, nor that the desired outputs will be delivered using it. Direct subsidies and/or regulations can be targeted at the desired outputs and so are normally more likely to be effective, and proportionate.”³³

4.10 As set out in the SRSP,³⁴ the purpose of AIP is to provide users with a sustained long-term signal of the value of the spectrum as indicated by its opportunity cost in the next highest use and, as a result, to give them incentives to use it in a way that maximises benefits for society over time. If the price charged for any limited resource does not reflect its opportunity cost, there will be less incentive to use it efficiently.

4.11 We considered that in general terms, benefits to society will be maximised over time if spectrum is priced to reflect opportunity cost, and that AIP fees set in this way have an effect similar to the prices that would emerge in a well-functioning spectrum market.³⁵

4.12 In considering this general policy in relation to setting ALFs for 412 MHz spectrum in particular, we take the view that ALFs below market value would effectively give Arqiva/Airwave as the licence holder a subsidy. This has the potential to distort economic incentives in terms of pricing and investment decisions, for instance by causing prices to deviate from the true cost of supply, or by distorting the efficient choice between spectrum-related investment and other investments. It also has the potential to distort competition. These distortionary outcomes would be harmful for consumers.

²⁹ SRSP statement, paragraph 3.34

³⁰ This is AIP Principle 4 in our SRSP.

³¹ SRSP statement, paragraph 4.203

³² This is AIP Principle 6 in our SRSP.

³³ SRSP statement, paragraph 4.214

³⁴ SRSP statement, paragraphs 3.33–3.34

³⁵ SRSP statement, paragraph 3.41

Securing the optimal use of spectrum

- 4.13 As explained above, the aim of setting spectrum fees based on market value is to provide users with a long-term signal of spectrum value, therefore giving incentives to use it in a way that maximises benefits to society over time. As set out above, we recognise that operators may be incentivised to make the most efficient use possible of spectrum they currently hold even without fees set at market value. However, this does not necessarily mean that they are the highest value user of this spectrum (i.e. even if they are incentivised to maximise the value of their use of that spectrum, they are not necessarily the most efficient user).
- 4.14 We also recognise that spectrum users can trade or acquire spectrum licences and that in theory this creates incentives for users to only hold licences for which they are the highest value users. However, we believe that there is a risk that users may be less responsive to the opportunity cost of holding spectrum (i.e. forgoing the revenue from trading it) than to ALFs based on market value, implying that trading by itself may not be sufficient to ensure that spectrum is allocated most efficiently. Although Arqiva/Airwave as the licence holder may be a particularly high value user of the 412 MHz spectrum, efficient use of this spectrum may also come from other users being able to access it in the future.
- 4.15 The SRSP identified several general barriers which might prevent spectrum trading from being sufficiently effective to promote the optimal use of spectrum, including high transaction costs or lack of price information.³⁶ Overall we consider that setting an ALF at market value is likely to secure optimal spectrum use by creating appropriate incentives to hold or release spectrum.
- 4.16 We note that spectrum trading has occurred in this band in the past, with Arqiva and Airwave completing a concurrent trade in 2008 which resulted in them becoming co-licensees. However, the fact that one such trade has occurred does not mean that spectrum holdings are necessarily optimized in the band and the existence of transaction costs and unclear pricing information may disincentivise other such trades. In addition, the type of potential alternative users for the band may also make trading less likely to occur. As set out above, the most likely alternative use for this band appears to be Business Radio, where a large number of users acquire licences in different regional locations. The fragmented nature of this demand and regional variation may make trading less likely to occur. Setting ALFs at market value would provide a clear signal to the market of the value of this spectrum.
- 4.17 Further, and as set out in paragraphs 3.24 and 3.33, we consider that the Business Radio fees upon which we propose to base the ALF provide a conservative estimate of the market value of the 412 MHz spectrum. By using these fees as the basis for our estimate of market value we have therefore sought to mitigate any risks to optimal use of the band from setting the fees too high. Our provisional view is that setting ALFs based on our

³⁶ SRSP, paragraphs 4.189–4.212

estimate of market value will secure optimal spectrum use and therefore give effect to our statutory duty at section 3(2) of the Communications Act.

Impact on citizens and consumers

- 4.18 In general, we consider that setting ALFs in accordance with market value will provide efficient price signals for the use of scarce spectrum which will overall benefit consumers by ensuring that spectrum is used in the most efficient way for the provision of downstream services for which there is greatest value. If the price of spectrum is below the opportunity cost, there is a risk that it will continue to be held by Arqiva/Airwave even if it is not the highest value user of that asset. This could be harmful to consumers and society more widely.
- 4.19 Airwave uses the 412 MHz band for its TETRA Emergency Services network. Arqiva currently uses the spectrum to provide smart water metering and smart energy metering services to utilities providers.³⁷
- 4.20 The SRSP sets out our view that:
- “We believe that if it is considered that a subsidy should be provided to support wider policy objectives, it is more efficient for those services to be explicitly subsidised by government from general taxation, leaving those providing them to have the same incentives to use resources, such as spectrum, efficiently, rather than seeking to provide such services through concessions on the fee charged. For these reasons, socially beneficial but un-commercial services do not generally receive goods, services or resources at a concession but, as a general rule, pay the market price.”*
- 4.21 We do not consider, consistent with our position in the SRSP, that the nature of the services provided by Arqiva and Airwave justify a decision to set the ALF below market value.
- 4.22 We have sought to apply a policy based on efficient price signals, which in general should lead to better welfare outcomes. In accordance with our primary duty to further the interests of citizens and consumers, we have not identified any reasons which we consider would justify departing from setting ALFs at market value.³⁸

³⁷ Arqiva, “Planning your Smart Water Network...the Arqiva way”, 31 October 2019,

<https://www.arqiva.com/views/blog/planning-your-smart-water-network-the-arqiva-way/>

³⁸ We note that Ofcom is also required by statute to assess the potential impact of all our functions, policies, projects and practices on the following equality groups: age, disability, gender, gender reassignment, pregnancy and maternity, race, religion or belief and sexual orientation. We refer to groups of people with these protected characteristics as ‘equality groups’. We fulfil these obligations by carrying out an Equality Impact Assessment (‘EIA’), which examines the impact our policy is likely to have on people, depending on their personal circumstances. EIAs also assist us in making sure that we are meeting our principal duty of furthering the interests of citizens and consumers, regardless of their background and identity. We consider that our proposed annual licence fees would have an over-arching positive impact on all consumers and citizens, given that our objective is to secure the optimal use of spectrum for the benefit of society as a whole. We consider that our proposals would not have a detrimental impact on any defined equality group.

Impact on competition

- 4.23 Our view on spectrum fees and competition, as set out in the SRSP, is that fees are unlikely to introduce distortions to competition in downstream markets when they reflect the opportunity cost of spectrum. However, in the SRSP, we said that we would consider the potential effect of spectrum fees on a case-by-case basis.
- 4.24 We have not identified any reasons why it might be appropriate to discount 412 MHz spectrum below market value in order to promote downstream competition. Setting ALFs below market value would effectively be providing Arqiva with a subsidy which could potentially distort competition in downstream markets. Therefore our provisional view is that setting ALFs for this spectrum based on our estimate of market value is consistent with promoting competition.

Impact on investment

- 4.25 Investment decisions should reflect the true cost of inputs. This is achieved where ALFs are set based on market value, as operators are required to pay the opportunity cost of their spectrum holdings.
- 4.26 It is important to distinguish between efficient and inefficient investment and consider the impact on efficient investment only. We recognise that setting ALFs at market value could in theory reduce the ability of existing licence holders to make investments that they otherwise would have made. However, this outcome may still be efficient as they will look for more efficient investment solutions or choose not to invest. This position is explained in the SRSP.³⁹
- 4.27 We do not consider that ALFs based on our estimate of market value would necessarily lead to lower investment levels, but even if this was the case this would not in itself be a reason to set ALFs below market value.

Provisional view on setting ALFs based on market value and phasing in

Provisional conclusion on annual licence fee

- 4.28 For the reasons set out above, we provisionally consider that setting ALFs based on our estimate of market value (i.e. £396,000 per MHz):
- a) will secure the optimal use of spectrum which we consider to be in the interests of UK citizens and consumers;

³⁹ SRSP statement, paragraphs 4.213–4.214 and 4.239.

- b) benefit consumers in the long run by ensuring that spectrum is used in the most efficient way for the provision of downstream services for which there is greatest value;
 - c) is consistent with promoting competition; and
 - d) can be expected to promote efficient investment.
- 4.29 We also consider that the imposition of an ALF for 412 MHz spectrum which is equal to the UK-wide Business Radio fees charged in the adjacent bands (which relate to technically substitutable spectrum) would be most consistent with the efficient and effective management of spectrum, and with our duty under section 3(3) of the Communications Act to have regard to the principle under which regulatory activities should themselves be consistent.
- 4.30 Therefore our provisional view is that setting ALFs for 412MHz spectrum at **£396,000 per MHz** will best meet our statutory duties in setting spectrum licence fees.

Phasing in

- 4.31 We have also considered whether, in this case, it would be appropriate to phase in the new fee rates over time. Our provisional view is that there should not be a phase-in period for these new fee rates, with the full fees becoming payable from Arqiva and Airwave's fee payment date of 5 October 2021. In taking this view, we take into account:
- a) that we noted in the award statement that, at the end of the 15-year initial licence term, there 'may be additional charges in line with Ofcom's policy on spectrum pricing at that time,'⁴⁰ and that we published our revised framework for spectrum pricing (the SRSP) in 2010. The licensees have therefore had a long notice period that they would be liable for ALFs from October 2021;
 - b) that the proposed fee levels are the same as our fees for UHF 1 and 2 national, exclusive Business Radio licences, which use spectrum in the adjacent bands. We consider that Airwave/Arqiva should have reasonably expected that the fees for their 412 MHz spectrum would be set at or around the proposed level; and
 - c) that we are proposing in the draft Proposed Regulations (provided at Annex 6) to provide Arqiva and Airwave with the option to pay their annual licence fees across ten equal monthly instalments (rather than as a single, upfront payment).

⁴⁰ Ofcom, *Award of available spectrum: 412-414 MHz paired with 422-424 MHz*, 6 April 2006, paragraph 5.1, page 22, https://www.ofcom.org.uk/_data/assets/pdf_file/0031/49819/statement.pdf

Question 4: Do you agree with our provisional conclusion that fees set based on our estimate of market value will best meet our statutory duties?

Next steps

4.32 We invite any comments on the proposals in this document by 5pm on **16 July 2021**. We expect to publish our conclusions later in 2021 (and in advance of 5 October).

Question 5: Are there any other comments that you wish to make in respect of the proposals that we make in this consultation?

A1. Responding to this consultation

How to respond

- A1.1 Ofcom would like to receive views and comments on the issues raised in this document, by 5pm on **16 July 2021**.
- A1.2 You can [download a response form](#) from the Ofcom website. You can return this by email or post to the address provided in the response form.
- A1.3 If your response is a large file, or has supporting charts, tables or other data, please email it to ALF2021@ofcom.org.uk, as an attachment in Microsoft Word format, together with the [cover sheet](#).
- A1.4 Responses may alternatively be posted to the address below, marked with the title of the consultation:
- ALF 2021 team
Ofcom
Riverside House
2A Southwark Bridge Road
London SE1 9HA
- A1.5 We welcome responses in formats other than print, for example an audio recording or a British Sign Language video. To respond in BSL:
- Send us a recording of you signing your response. This should be no longer than 5 minutes. Suitable file formats are DVDs, wmv or QuickTime files; or
 - Upload a video of you signing your response directly to YouTube (or another hosting site) and send us the link.
- A1.6 We will publish a transcript of any audio or video responses we receive (unless your response is confidential)
- A1.7 We do not need a paper copy of your response as well as an electronic version. We will acknowledge receipt if your response is submitted via the online web form, but not otherwise.
- A1.8 You do not have to answer all the questions in the consultation if you do not have a view; a short response on just one point is fine. We also welcome joint responses.
- A1.9 It would be helpful if your response could include direct answers to the questions asked in the consultation document. The questions are listed at Annex 4. It would also help if you could explain why you hold your views, and what you think the effect of Ofcom's proposals would be.
- A1.10 If you want to discuss the issues and questions raised in this consultation, please contact the ALF 2021 team by email to ALF2021@ofcom.org.uk.

Confidentiality

- A1.11 Consultations are more effective if we publish the responses before the consultation period closes. In particular, this can help people and organisations with limited resources or familiarity with the issues to respond in a more informed way. So, in the interests of transparency and good regulatory practice, and because we believe it is important that everyone who is interested in an issue can see other respondents' views, we usually publish all responses on [the Ofcom website](#) as soon as we receive them.
- A1.12 If you think your response should be kept confidential, please specify which part(s) this applies to, and explain why. Please send any confidential sections as a separate annex. If you want your name, address, other contact details or job title to remain confidential, please provide them only in the cover sheet, so that we don't have to edit your response.
- A1.13 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and try to respect it. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A1.14 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's intellectual property rights are explained further in our [Terms of Use](#).

Next steps

- A1.15 Following this consultation period, Ofcom plans to publish a statement later in 2021.
- A1.16 If you wish, you can [register to receive mail updates](#) alerting you to new Ofcom publications.

Ofcom's consultation processes

- A1.17 Ofcom aims to make responding to a consultation as easy as possible. For more information, please see our consultation principles in Annex 2.
- A1.18 If you have any comments or suggestions on how we manage our consultations, please email us at consult@ofcom.org.uk. We particularly welcome ideas on how Ofcom could more effectively seek the views of groups or individuals, such as small businesses and residential consumers, who are less likely to give their opinions through a formal consultation.
- A1.19 If you would like to discuss these issues, or Ofcom's consultation processes more generally, please contact the corporation secretary:

Corporation Secretary
Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA
Email: corporationsecretary@ofcom.org.uk

A2. Ofcom's consultation principles

Ofcom has seven principles that it follows for every public written consultation:

Before the consultation

- A2.1 Wherever possible, we will hold informal talks with people and organisations before announcing a big consultation, to find out whether we are thinking along the right lines. If we do not have enough time to do this, we will hold an open meeting to explain our proposals, shortly after announcing the consultation.

During the consultation

- A2.2 We will be clear about whom we are consulting, why, on what questions and for how long.
- A2.3 We will make the consultation document as short and simple as possible, with a summary of no more than two pages. We will try to make it as easy as possible for people to give us a written response. If the consultation is complicated, we may provide a short Plain English / Cymraeg Clir guide, to help smaller organisations or individuals who would not otherwise be able to spare the time to share their views.
- A2.4 We will consult for up to ten weeks, depending on the potential impact of our proposals.
- A2.5 A person within Ofcom will be in charge of making sure we follow our own guidelines and aim to reach the largest possible number of people and organisations who may be interested in the outcome of our decisions. Ofcom's Consultation Champion is the main person to contact if you have views on the way we run our consultations.
- A2.6 If we are not able to follow any of these seven principles, we will explain why.

After the consultation

- A2.7 We think it is important that everyone who is interested in an issue can see other people's views, so we usually publish all the responses on our website as soon as we receive them. After the consultation we will make our decisions and publish a statement explaining what we are going to do, and why, showing how respondents' views helped to shape these decisions.

A3. Consultation coversheet

BASIC DETAILS

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

CONFIDENTIALITY

Please tick below what part of your response you consider is confidential, giving your reasons why

Nothing

Name/contact details/job title

Whole response

Organisation

Part of the response

If there is no separate annex, which parts? _____

If you want part of your response, your name or your organisation not to be published, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name

Signed (if hard copy)

A4. Consultation questions

Question 1: Do you agree with our provisional conclusion that there is likely to be excess demand for the 412MHz band in future and that therefore an AIP fee is appropriate? Please provide any evidence to support your position.

Question 2: Do you agree with our provisional conclusion that UK-wide exclusive Business Radio is the highest value alternative use for the 412MHz band? Please provide any evidence to support your position.

Question 3: Do you agree with our provisional conclusion to set the annual licence fee for 412 MHz equal to the Business Radio UK-wide fee for high usage bands? Please provide any evidence to support your position.

Question 4: Do you agree with our provisional conclusion that fees set based on our estimate of market value will best meet our statutory duties?

Question 5: Are there any other comments that you wish to make in respect of the proposals that we make in this consultation?

A5. Notice of Proposed Regulations

Notice of proposals

1. This notice is given in accordance with section 122(4) and (5) of the Wireless Telegraphy Act and covers a proposal to make a statutory instrument.
2. The proposed statutory instrument sets out how we would give effect to Ofcom's proposal to introduce fees for the licence currently held (on a concurrent basis) by Arqiva and Airwave in respect of the 412–414 MHz, paired with the 422–424 MHz, spectrum bands (the "**412 MHz spectrum**" and the "**412 MHz Licence**" respectively). Details of Ofcom's proposal are set out in this consultation document and the proposed statutory instrument shows how Ofcom would give effect to it if our final decision following the overall consultation process were in line with our current proposals.

Proposed Regulations

3. Ofcom has the power under section 12 and 122(7) of the Wireless Telegraphy Act to make regulations to prescribe sums payable in respect of wireless telegraphy licences.
4. Ofcom proposes to make regulations to amend the Wireless Telegraphy (Licence Charges) Regulations 2020/1068 (the "**2020 Regulations**") to introduce an annual licence fee in respect of the 412 MHz Licence, and to prescribe the amount of that fee.
5. A draft of the proposed regulations is set out in Annex 6 and their general effect is set out in this Annex.
6. Hard copies of this notice and the proposed regulations can be obtained from:
ALF team
Ofcom, Riverside House, 2A Southwark Bridge Road, London SE1 9HA
AFL2021@ofcom.org.uk
7. Comments or representations with respect to the proposed regulations are invited by **16 July 2021**. Comments should be sent to the contact named above at the above address.
8. Following completion of the overall consultation process, Ofcom intends to make the final regulations as soon as practicable.

General effect of the proposed Wireless Telegraphy (Licence Charges) (Amendment) Regulations 2021

The legislative framework

9. Under section 12 the Wireless Telegraphy Act, Ofcom may make regulations to prescribe sums payable in respect of wireless telegraphy licences. When doing so, section 122(7) of the Wireless Telegraphy Act enables Ofcom to make different provisions for different cases and to make incidental provisions.
10. In October 2006, following an auction process, Ofcom awarded a single national licence for the use of the 412 MHz spectrum (namely, the 412 MHz Licence). In accordance with section 12(5) of the Wireless Telegraphy Act, no sums were payable in respect of the 412 MHz Licence for a period of 15 years from its grant. However, in accordance with section 12(6) of the Wireless Telegraphy Act, the 412 MHz Licence includes a requirement that, from 5 October 2021, an annual licence fee will be payable in accordance with regulations set by Ofcom.
11. Therefore, Ofcom is now giving notice of its proposed Wireless Telegraphy (Licence Charges) (Amendment) Regulations 2021 (the "**Proposed Regulations**"), which would give effect to Ofcom's proposal to introduce an annual licence fee in respect of the 412 MHz Licence.

The general effect of the Proposed Regulations

12. The Proposed Regulations will amend the 2020 Regulations so as to prescribe the sums which will be payable for the 412 MHz Licence from 5 October 2021.

Extent of application and entry into force of the Proposed Regulations (reg.1)

13. The Proposed Regulations will apply in the United Kingdom.
14. The Proposed Regulations will come into force as soon as practical after making. The final regulation will be made after Ofcom has concluded its consultation process on the fees and made a final decision as to the level of fees payable.

Interpretation (reg.2)

15. Regulation 2 defines the meaning of a number of terms which are relevant to understand the other provisions in the Proposed Regulations.

Amendment of the 2020 Regulations (reg.3)

16. Regulation 3(1) of the Proposed Regulations provides that the 2020 Regulations shall be amended in accordance with regulations 3(2) and 3(3) of the Proposed Regulations.
17. Regulation 3(2) of the Proposed Regulations will amend regulation 4(6)(b) of the 2020 Regulations so as to ensure that the 412 MHz Licence is among the class of licences in respect of which regulation 4(8) of the 2020 Regulations applies. Regulation 4(8) of the 2020

Regulations sets out those classes of licence in respect of which a licensee can elect to pay its licence fee across ten equal monthly instalments (rather than in a single lump sum). The effect of this amendment is therefore to enable Arqiva and Airwave (or any subsequent holder of the 412 MHz Licence) to pay the 412 MHz Licence annual licence fee in ten equal monthly instalments, provided that they notify Ofcom in advance of their intention to do so.

18. Regulation 3(3) of the Proposed Regulations will set out the fees payable in respect of the 412 MHz Licence, by adding a new entry under the heading "Spectrum Access" in Schedule 2 (*Licence Charges and Payment Intervals*) of the 2020 Regulations. For the purposes of the Proposed Regulations, the fees payable will be £9,900 for each 2 x 12.5 kHz channel in the 412 MHz spectrum bands. These fees will be due on an annual basis (and, in accordance with the 412 MHz Licence, will be due on 5 October annually).

A6. Draft of the Proposed Regulations

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A6. Draft of the Proposed Regulations

DRAFT STATUTORY INSTRUMENT

2021 No.

ELECTRONIC COMMUNICATIONS

The Wireless Telegraphy (Licence Charges) (Amendment) Regulations 2021

Made - - - - [date to be specified in the final regulations]

Coming into force - [date to be specified in the final regulations]

The Office of Communications (“OFCOM”) makes the following Regulations, in exercise of the powers conferred by sections 12, 13(2) and 122(7) of the Wireless Telegraphy Act 2006 (the “Act”).

Before making these Regulations, OFCOM has given notice of its proposal to do so in accordance with section 122(4)(a) of the Act, published notice of its proposal in accordance with section 122(4)(b) of the Act, and have considered the representations made to them before the time specified in the notice in accordance with section 122(4)(c) of the Act.

Citation and commencement

1. These Regulations may be cited as the Wireless Telegraphy (Licence Charges) (Amendment) Regulations 2021 and shall come into force on *[date to be specified in the final regulations]*.

Interpretation

2. In these Regulations —

“2020 Regulations” means the Wireless Telegraphy (Licence Charges) Regulations 2020/1068;

“Act” means the Wireless Telegraphy Act 2006; and

“OFCOM” means the Office of Communications.

Amendment to the 2020 Regulations

3.—(1) The 2020 Regulations shall be amended in accordance with the following paragraphs of these Regulations.

(2) In Regulation 4 (licence charges and time of payment) —

(a) delete the word “or” from the end of paragraph 6(b)(vi);

(b) insert the word “or” at the end of paragraph 6(b)(vii); and

(c) under paragraph 6(b)(vii), insert the following entry —

“(viii) the class “Spectrum Access 412 MHz” listed under the heading “Spectrum Access” in Schedule 2.”

(3) In Schedule 2 (licence charges and time of payment), under the heading “Spectrum Access”, insert the following entry —

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>
<i>Class of licence</i>	<i>Fixed sums</i>	<i>Variable sums</i>	<i>Prescribed payment interval</i>
Spectrum Access 412 MHz	£9,900 for each 2 x 12.5 KHz channel in the 412 – 414 MHz, paired with 422 – 424 MHz, bands.		12 months

For and by the authority of the Office of Communications