



# Spectrum pricing for terrestrial broadcasting

Statement

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## Section 1

# Executive summary

- 1.1 This Statement sets out our decision to proceed with proposals made in our Consultation on '*Spectrum pricing for terrestrial broadcasting*' (the 'Consultation'), which was published on 13 March 2013 and which closed on 23 May 2013.
- 1.2 The Consultation referred back to a statement published in 2007 which set out the principle that charges should apply to spectrum used for broadcasting in the same way as for other spectrum uses. The statement said that a fee based on the opportunity cost of using the spectrum – i.e. Administered Incentive Pricing (AIP) – would provide an appropriate pricing mechanism. We said in 2007 that AIP should be introduced for terrestrial broadcasters from the end of 2014.
- 1.3 However, our Consultation proposed delaying the introduction of AIP for digital terrestrial television (DTT) until material progress had been made on the implementation of our strategy for UHF spectrum, implying that AIP might be introduced in around 2020. We proposed that fees reflecting the cost of spectrum management should apply instead i.e. 'cost-based fees'.
- 1.4 In addition, we said that AIP was not applicable to spectrum used for DAB radio or for local TV because there was no excess demand for the frequencies used by these licensees. As for DTT, we proposed that cost-based fees should apply.
- 1.5 We asked stakeholders whether they agreed with our conclusions. After careful consideration of the responses we have decided that:
  - We will introduce charges for the use of spectrum for broadcasting from the end of 2014;
  - However, in relation to national digital terrestrial television (DTT) we will not – for now – introduce charges based on the opportunity cost of using the spectrum (AIP). Instead, we will apply a pricing mechanism to reflect our spectrum management costs (cost-based fees);
  - We will apply this pricing regime until we have materially progressed our proposals for the future use of the UHF spectrum. We intend spectrum charges for DTT broadcasting to be adjusted to AIP, based on the true opportunity cost of the spectrum at that time, and therefore expect AIP to be in place by around 2020;
  - AIP will not be applied to the use of spectrum by either DAB radio or local TV broadcasting. As for DTT, we will instead apply cost-based fees.
- 1.6 We will consult later this year (2013) on how cost-based fees will be introduced for DTT and local TV. In relation to DAB radio, we do not expect to consider how charges will be introduced until after the Government has announced its decisions on digital radio switchover.

## Section 2

# Introduction

- 2.1 Our Consultation on spectrum pricing for terrestrial broadcasting ('The Consultation') was published on 13 March 2013. It set out revised proposals for applying charges to spectrum used for digital terrestrial television (DTT); local TV; and DAB radio.
- 2.2 In particular, it proposed a postponement of the introduction of Administered Incentive Pricing (AIP) for spectrum used for DTT from its planned implementation date of the end of 2014. We said we intended AIP to be applied to DTT from around 2020, when we expected to have made material progress on implementing our strategy for use of the UHF spectrum. We said AIP should not apply to DAB radio or local TV, because there was no evidence of current excess demand for the spectrum used for these purposes.
- 2.3 Instead, we proposed that fees based on a pricing mechanism to reflect our spectrum management costs should apply to national DTT, DAB radio and local TV (i.e. 'cost-based fees').
- 2.4 The Consultation closed on 23 May 2013, and we received 21 responses. These fell broadly into two categories:
  - Most broadcasters welcomed our proposals to delay the introduction of AIP from the end of 2014 – but opposed the underlying principle of AIP and said it should never be applied to broadcasting use of spectrum;
  - Most non-broadcasters (principally mobile network operators) said all users of spectrum should be treated equally, and that broadcasters should therefore be subject to AIP in the same way as others.
- 2.5 Having carefully considered all the responses we have received, we consider it appropriate to confirm our proposals for the reasons set out in this document.
- 2.6 In light of our conclusions on the revised timing for introducing AIP we have not, at this stage, re-considered the underlying principle of applying AIP to spectrum used for broadcasting.
- 2.7 As stated in the Consultation, we still consider at this stage that AIP is an appropriate pricing mechanism for spectrum use, and believe it will remain relevant in future. We will put forward our full reasoning and consider all relevant evidence at the time we make firm proposals on its introduction (i.e. nearer to 2020).

## Consultation proposals

- 2.8 Our Consultation restated the principle that all users of spectrum should pay an appropriate charge for access to what is a scarce resource. It noted that the use of spectrum for terrestrial broadcasting was one of the few remaining areas where such charges have not yet been applied. It went on to address the conclusions reached in a statement published in June 2007<sup>1</sup>. That statement said:

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<sup>1</sup> <http://stakeholders.ofcom.org.uk/consultations/futurepricing/statement/>

- Broadcasting use of spectrum should be subject to appropriate charges in the same way as other uses;
  - The right time to introduce charging for spectrum used for digital broadcasting – both television and radio – would be from the end of 2014;
  - Before introducing any charges, we would consider carefully any potential effects on broadcasting output, and the right options to address or mitigate those effects.
- 2.9 The 2007 statement then set out the principle behind AIP - namely, that fees should be based on the opportunity cost of using the spectrum for one purpose as opposed to another i.e. the value of the spectrum if it was used for the most valuable alternative use. The statement concluded that AIP should apply to spectrum used for broadcasting from the end of 2014.
- 2.10 Our Consultation reiterated the conclusions of the 2007 statement that it is right to apply charges to spectrum used for broadcasting, and that AIP is an appropriate pricing mechanism.
- 2.11 Accordingly, the Consultation made it clear that we were not seeking to re-address the principles behind spectrum charging for broadcasting, or the application of AIP in particular. The Consultation stated: *“We see no reason to revise our approach to the principle of applying AIP, as set out in the 2007 statement”*. Instead, we said the Consultation was being published in order to set out revised proposals for the *implementation of charges*.
- 2.12 We considered first whether 2014 was the appropriate time to introduce AIP to spectrum used for national DTT. We assessed this in light of likely changes to the international environment affecting DTT use of spectrum. We asked whether AIP would achieve its objective of delivering greater efficiency in spectrum use in the new circumstances, and whether there would be scope for broadcasters to respond effectively.
- 2.13 We said that decisions taken by the World Radio-communications Conference in 2012 (WRC12) to signal the potential clearance of DTT from the 700 MHz spectrum band meant national DTT multiplex operators (i.e. the spectrum licensees) were unlikely to be able to respond effectively to the price signals provided by AIP in the meantime. Instead, a co-ordinated approach to any clearance programme was likely to deliver significant efficiency benefits, regardless of any application of AIP.
- 2.14 In these unique circumstances, we considered it inappropriate to introduce AIP for spectrum used for DTT – at least until we had materially progressed our plans for future use of the UHF spectrum.
- 2.15 We then considered whether AIP should apply to local TV broadcasting and to DAB radio. We said there was no evidence of excess demand for the interleaved spectrum used by local TV, and therefore no opportunity cost. AIP was therefore not applicable for local TV broadcasting. In the spectrum bands assigned for DAB radio, we said there was spare capacity at present, and therefore no evidence of excess demand. As for local TV, AIP was therefore not applicable.
- 2.16 In light of the analysis contained in the Consultation, we set out revised proposals on the introduction of charges for spectrum used by broadcasters:

- We proposed to introduce charges for the use of spectrum for broadcasting from the end of 2014.
  - However, we proposed that in relation to use of the spectrum by national DTT, charges would not – for now – be based on opportunity cost. Instead, we proposed to apply a regulatory pricing mechanism to reflect our on-going costs in managing the spectrum.
  - We proposed that this pricing regime for the use of spectrum by national DTT would apply until we had materially progressed our proposals for the future use of the UHF spectrum. We intend spectrum charges to then be adjusted to AIP, based on the true opportunity cost of the spectrum at that time, and therefore expect AIP to be in place by around 2020.
  - We proposed that AIP was not applicable to the use of spectrum by either DAB radio or local TV broadcasting from 2014. Instead, we proposed to apply a regulatory pricing mechanism to reflect our on-going costs in managing the spectrum.
- 2.17 We restated a commitment included in our 2007 statement that we would consider both the potential effects of AIP on broadcast content, and the steps available to mitigate those effects, before applying AIP – particularly in regard to public service broadcasting (PSB). However, in light of our proposals to delay the introduction of AIP, we did not consider it necessary at this stage to consider the potential impact of AIP on broadcast content.
- 2.18 Finally, we acknowledged that current and prospective spectrum users would welcome guidance on indicative AIP levels for spectrum currently used by DTT, even though we were not proposing to introduce such charges until around 2020. We therefore published work carried out by Analysys Mason<sup>2</sup>, under commission from Ofcom, to consider the opportunity cost value of DTT spectrum, and set out our analysis of what that work implied for AIP.

## Remainder of this document

- 2.19 The next section of this document (Section 3) sets out a summary of the Consultation responses we have received and our consideration of the points that have been raised. The following section (Section 4) sets out our conclusions in light of those considerations, and our next steps.

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<sup>2</sup> <http://stakeholders.ofcom.org.uk/binaries/consultations/aip13/annexes/report.pdf>

## Section 3

# Consultation Responses

3.1 This Section of the Statement summarises the Consultation responses we received on spectrum pricing for terrestrial broadcasting, and our consideration of those responses. We first consider the general points made by stakeholders, including our approach to addressing the principle of AIP. We then address responses to individual questions asked in the Consultation.

## Overview of responses

- 3.2 Twelve of the 21 Consultation responses we received were from broadcasters or from organisations with a direct interest in broadcasting. Six responses were submitted by mobile network operators (MNOs) or related organisations. There was also a response from the Radio Centre plus two submissions from interested individuals.
- 3.3 Six of the responses were submitted confidentially. However, there were no significant points made in confidential submissions that were not made elsewhere in non-confidential responses. The non-confidential responses are published on our website<sup>3</sup>.
- 3.4 There was a clear divide between broadcast organisations and MNOs on the most appropriate approach to spectrum charges for broadcasting.
- 3.5 The respondents involved with broadcasting generally welcomed the decision to postpone the implementation of AIP. However there was overwhelming opposition among this group of stakeholders for AIP to be applied at any time in the future. In summary, they said:
- The justification for AIP is to incentivise spectrum efficiency – but broadcasters will be no more capable of responding to AIP price signals post 2020 than they are now. This is because of obligations placed on them through multiplex licences; and because changes in use of broadcast spectrum will always involve managed and co-ordinated processes.
  - AIP will have a negative impact on broadcasters' abilities to fund television content. The PSB broadcasters said this was of particular importance in respect to public service content.
- 3.6 Some broadcasting respondents submitted detailed consultancy reports in support of their arguments against the principle of AIP.
- 3.7 In contrast, most of the MNOs considered AIP to be an appropriate pricing mechanism to apply to spectrum used for broadcasting. Only one of the MNOs to respond said it was *not* an appropriate mechanism: EE said there was no economic rationale for applying AIP to any tradable spectrum – but if pricing mechanisms were to be applied, they should be applied equally to all sectors. Three, Vodafone and the Mobile Broadband Group also made the point that all spectrum users should be

<sup>3</sup> <http://stakeholders.ofcom.org.uk/consultations/aip13/?showResponses=true>



treated equally. These respondents disagreed with the proposal to delay the introduction of AIP. Another respondent, BT, agreed with Ofcom that there were valid reasons for a delay.

- 3.8 Some MNOs, including Telefónica and Vodafone, questioned the work carried out for Ofcom by Analysys Mason to determine indicative levels of AIP for spectrum currently used for DTT. They said assumptions underlying the calculations needed to be revised.

## **Ofcom response to general points**

### *Principle of AIP*

- 3.9 Our 2007 statement concluded that charges should apply to spectrum used for broadcasting, and that AIP based on opportunity cost was an appropriate pricing mechanism. As indicated above, we made it clear in our Consultation that we were not seeking to re-address this general principle, but instead seeking views on the implementation of that policy.
- 3.10 Nevertheless, we thought it appropriate to restate the rationale for AIP and invite general views on the relevance of its application to broadcast spectrum. It would have been important to address this question in detail if we had opted to introduce AIP more immediately as a result of considering Consultation responses.
- 3.11 We note that many of the responses from broadcasters addressed in great depth the *principle* of applying AIP, rather than concentrating on our immediate proposals on implementation. In some instances, we received detailed consultancy reports questioning the conclusions contained in our 2007 statement. However, we note that the core arguments are similar to those first made before the 2007 statement – namely that broadcasters are never able to respond effectively to efficiency signals delivered by AIP.
- 3.12 Taking all the Consultation responses together, i.e. those from broadcasters and those from MNOs, we observe that we have received views both for and against the principle behind AIP. However, in view of the fact that we are not now intending to introduce AIP for spectrum used by broadcasters until around 2020, we consider it premature to re-address the underlying rationale in detail at present. It is entirely possible that the spectrum environment for broadcasters will have changed by then, and so any analysis conducted now will be outdated.
- 3.13 We have given a firm commitment that we will consult again on AIP before it is introduced. In particular, we have said we will consider its impact on broadcast content, and the measures that might be taken to mitigate those impacts. We would expect stakeholders to submit further arguments in response to those detailed proposals.

### *Indicative levels for AIP in 2020*

- 3.14 We note the concern expressed by some respondents about the basis on which indicative AIP levels were calculated. We welcome the input of interested stakeholders and will consider the points raised when we consult nearer the time of actual implementation.
- 3.15 It is important to note that the calculations included in the Consultation were entirely indicative and were presented only in order to give broadcasters a broad idea of

potential AIP levels in 2020, based on current assessments. The spectrum environment is very likely to have changed by the time of any actual implementation of AIP and fresh calculations will be needed.

## Responses to specific consultation questions

- 3.16 In addressing responses to the specific questions we asked in the Consultation we will deal first with Question 2, since our consideration of this issue has a direct relationship to how we should address Question 1. Our consideration of Question 1 therefore follows that of Question 2.
- 3.17 It is also the case that Question 2, relating to our approach to the application (or not) of AIP for national DTT broadcasting, represents the most significant issue we need to determine. This is because the analysis in the Consultation suggests AIP is not applicable to DAB radio or to local TV because there is no excess demand for spectrum used for these purposes.

*Question 2: Do you agree with our revised proposals to delay the introduction of AIP based on opportunity cost for national DTT multiplex operators until we have materially progressed our proposals for the future use of the UHF spectrum?*

- 3.18 All of the respondents with a direct involvement in the broadcasting industry supported the proposal to delay the implementation of AIP charges. Many of them - including the BBC, Channel 4, S4C and some organisations who submitted confidential responses - used their answer to this question to restate the general point (discussed above) that AIP will never be an appropriate pricing mechanism for spectrum used by broadcasters.
- 3.19 In the introduction to its response, the BBC described our proposal for delay as a “*sensible and pragmatic*” approach to the particular circumstances. The corporation recognised the major decisions likely to be faced regarding the future use of UHF spectrum, including the division between DTT and mobile use, and the future deployment of white space devices and PMSE. The BBC therefore supported Ofcom’s proposal not to pursue the “*potentially disruptive AIP policy in the medium term*”. It said Ofcom had shown an appreciation of the challenges facing the industry in responding to spectrum pricing incentives.
- 3.20 Channel 4 and Channel 5 said the potential clearance of the 700 MHz spectrum band was contingent on all multiplex operators adopting more efficient DVB-T2/MPEG4 transmission technologies. Channel 4 said this will entail disruption and significant costs, including for infrastructure. Against this background it would be inappropriate for national DTT multiplex operators to be charged AIP. Channel 5 said the moves to efficient transmission technologies would need to be carefully co-managed to avoid disruption. The move could be comparable to the move from analogue to digital television. In light of the need for a “*top-down properly managed process*”, introducing AIP at the same time would not assist the process.
- 3.21 Other broadcasters, including those who submitted confidential responses, made the same or similar points. Of the remaining non-confidential broadcasting respondents, The Commercial Broadcasters Association said introducing AIP alongside proposals affecting the future use of the UHF spectrum would be too disruptive for the industry. PACT, the body representing independent TV producers, said a delay in the

introduction of AIP was important to give broadcasters time to accommodate the impact of pricing on their ability to invest in original UK content. The British Film Institute (BFI) also supported a delay but, like the major broadcasters, said AIP would never be an appropriate pricing mechanism for broadcasting use of spectrum.

- 3.22 Most of the MNOs who responded to Question 2 generally opposed our proposal to delay the introduction of AIP for broadcasters. A further respondent, BT, agreed with both our reasoning and our conclusions.
- 3.23 BT said that in view of the “special circumstances” identified by Ofcom it may be better to concentrate on establishing a plan to achieve the changes in use of UHF spectrum rather than applying AIP to spectrum used by broadcasters. In particular, BT identified the priority objectives of releasing the 700 MHz band for mobile broadband and consolidating the digital TV platform into a smaller amount of spectrum. BT said it was unclear at present how AIP will, in the short term, lead to more efficient use of spectrum, and that increased costs would take money away from content production. In the longer term, AIP would again be appropriate because there will be attractive alternatives for the delivery of TV services via superfast broadband. This could further free up spectrum currently used for terrestrial broadcasting.
- 3.24 Vodafone said that broadcasters and mobile operators should be treated equally but - provided this principle was recognised in general - said it was broadly in agreement with Ofcom’s approach in the short term. DTT broadcasters should be aware of appropriate AIP levels and take into account the value of the spectrum they use – even if AIP is not applied immediately. Time-shifted channels did not represent efficient use of the spectrum, for example.
- 3.25 The timing for implementation of AIP for broadcasting should be properly dictated by 700 MHz clearance and not be just a “*convenient date*”, according to Vodafone. In the meantime, Vodafone concluded that the “*actual charge of an AIP-based spectrum fee adds little to the determination of the optimal uses of the spectrum*”. The funds saved by the DTT operators as a result of delaying implementation of AIP should be used to help the spectrum re-planning process.
- 3.26 In contrast to BT and Vodafone, EE said that if AIP was relevant to broadcasting, it was as relevant now as much as any time. EE therefore did not agree with Ofcom’s proposals to delay implementation. It said the reasons Ofcom had put forward for delaying implementation would be no different in 2020 and that the ‘unique circumstances’ around the potential clearance of the 700 MHz spectrum “*are likely to be followed by another set of ‘unique circumstances’*”. In EE’s view, Ofcom’s arguments did not support the proposed delay.
- 3.27 Three also expressed opposition to the proposed delay and said Ofcom had failed to justify its conclusions. Although a co-ordinated plan will be needed to clear the 700 MHz spectrum, it does not mean that transition to DVB-T2/MPEG4 is needed. There is therefore no need to forego this efficiency gain in order to wait for a co-ordinated approach. AIP now would provide a real incentive for broadcasters to consider short-term decisions that could release spectrum. This would be much better overall for citizens and consumers.
- 3.28 The Mobile Broadband Group agreed and said broadcasters had already benefitted from a £1 billion easement in costs while MNOs had paid out billions at auction to acquire spectrum and then in payment of spectrum fees. This was significantly at odds with the principle of fair competition, optimal use of spectrum, and technological

neutrality. Free spectrum was a subsidy for broadcasters. Ofcom should not be in a position of supporting old technology through such a subsidy at the expense of more efficient technologies. The response concluded that “*no platform is owed a living.*”

*Ofcom response*

- 3.29 The sharply polarised views of proponents and opponents of AIP were expected when we published our consultation and largely reflect differences of opinion first expressed ahead of our 2007 statement. Many of the views expressed reflected particular opinions on the *principle* of AIP for broadcasting, rather than the specific proposal to delay its introduction.
- 3.30 It was perhaps to be expected that broadcasting holders of multiplex licences – facing the prospect of AIP level charges from the end of next year (2014) – would welcome a delay to the introduction of those charges, regardless of their views about the rationale behind AIP.
- 3.31 However, it is important for us to focus on the specific reasons we believe a delay is appropriate. We said in the Consultation that we remain of the view that it is right to apply charges to spectrum; and that it is appropriate, in principle, to set charges at AIP levels. We identified the ‘critical question’ as being whether AIP would actually achieve its objective of delivering greater efficiency of spectrum use if it was introduced from the end of 2014. In particular, whether there would be scope for broadcasters to respond effectively to pricing signals.
- 3.32 We believe our assessment - that the unique set of circumstances arising as a result of potential changes in use of spectrum at 700 MHz means broadcasters are unlikely to respond to AIP price signals – remains the correct one. In those circumstances, meaningful efficiency gains are far more likely to be achieved through co-ordination among multiple stakeholders, both in the UK and internationally. We do not believe AIP would be a driver of these efficiencies, and so it is unlikely in itself to meet its core objective of securing the optimal use of spectrum.
- 3.33 This analysis was broadly endorsed not only by the broadcasting organisations but also by Vodafone and BT (though we note BT is now becoming an important broadcaster too, as a result of acquiring some exclusive sports rights).
- 3.34 The concerns of MNOs opposed to a delay in applying AIP to broadcast spectrum seemed to focus on the fairness of charges to one set of stakeholders set against the free spectrum used by another.
- 3.35 We are mindful of ensuring that we do not act in a discriminatory manner. However, the principle of non-discrimination does not require the treatment of all persons in an identical manner. AIP will be levied according to the ability of stakeholders to respond to the price signals it provides i.e. to ensure the efficient use of the spectrum. In principle, therefore, all users of spectrum will be treated equally. Nevertheless, Ofcom has considered in this case, as in other cases, whether the imposition of AIP at this time would ensure the efficient use of spectrum by the DTT operators - and has concluded that it could not. Consequently, we have indicated that we do not consider it appropriate to require the payment of AIP from DTT operators at this time. We do not therefore consider that this approach is discriminatory.
- 3.36 In addition, we remain unconvinced by the arguments presented by some that broadcasters are *currently* in a position to react to AIP by unilaterally improving their

spectrum efficiency. Accordingly, we believe our overall position remains the right one: i.e. that charges for spectrum – and AIP in particular – are in principle appropriate for broadcasting, but that now is not the right time to introduce charges based on full AIP.

*Question 1: Do you agree that the principle of applying AIP remains relevant to spectrum used for broadcasting?*

- 3.37 Having confirmed our proposal to delay the implementation of AIP for spectrum used by DTT broadcasters, we now turn to Question 1 in the Consultation.
- 3.38 As indicated above, this question would have been particularly relevant if our consideration of Consultation responses had led us to revise our proposals, and to proceed with the introduction of AIP from the end of 2014. It is much less relevant in a situation where we have considered the responses in detail and concluded that it is appropriate to postpone the introduction of AIP for DTT until around 2020. For this reason, as already stated above, the question of ‘principle’ is not addressed in detail in this Statement.
- 3.39 Nevertheless, we note the depth of feeling expressed in responses submitted by broadcast spectrum licensees, and others with an interest in broadcasting. In particular, we acknowledge the inclusion alongside some of the responses of detailed supporting submissions, compiled by consultancy organisations and addressing the core underlying arguments for applying AIP to spectrum used for broadcasting.
- 3.40 There were common threads in this body of responses. Some suggested that our Consultation had correctly presented the case for why AIP was not applicable at the moment for broadcast spectrum – but said we had failed to make a convincing argument as to why it should be any more applicable in the future. Taken together, the detailed submissions from broadcasters set out the following key arguments:
- The justification for applying AIP is to increase spectrum efficiency, not just to ensure a market rate fee. Broadcasting cannot respond to such signals in the same way as other users;
  - Broadcast multiplex licensees are subject to detailed regulatory obligations including the level of UK coverage, transmission formats, transmitter powers etc. These are imposed through licence conditions and leave very limited room for broadcasters to apply efficiency improvements;
  - The spectrum usage of PSB broadcasters in particular is a function of their public service remit, and not a matter of choice. Spectrum is paid for through delivery of that remit;
  - Broadcasters’ use of particular spectrum frequencies in the UK is dependent on internationally agreed co-ordination because of the need to avoid cross-border interference;
  - There is no scope for an individual DTT broadcaster to adopt spectrum efficiencies unilaterally because the platform is fully inter-dependent. Spectrum efficiencies will always depend on co-ordinated action ;

- Any uncoordinated adoption of more efficient transmission technologies would leave very significant numbers of consumers stranded with obsolete equipment. This would not be allowed to happen;
- The market for broadcast spectrum is already efficient because it operates in a competitive environment. Access to spectrum is already fully tradable through paying the market rate for multiplex capacity;
- These factors will apply just as much after any 700 MHz clearance (around 2020) as they do now. Broadcasters will be no more able to respond in future;
- AIP represents an additional charge on DTT broadcasters which will inevitably be reflected in reduced budgets for television content. This will be to the detriment of citizens and consumers, especially in terms of public service content.

- 3.41 Some of the PSBs made particular arguments in respect of public service content. They said Ofcom had a statutory duty to promote the fulfilment of the purposes of PSB. This view was supported also by PACT and the BFI. Channel 4 said nearly all of its profits go on funding content. Any AIP charge was likely to be met by an equivalent reduction in the budget for content. Other broadcasters said DTT was 'different' to other uses of spectrum because it enriched culture and society. A confidential respondent said a thriving DTT platform depended on both PSB and non-PSB content.
- 3.42 In contrast, all but one of the MNOs who expressed an opinion on the principle of AIP said it should apply to spectrum used for broadcasting (EE said it was unnecessary in any market where spectrum is tradable since this already incentivises efficiency).
- 3.43 Three said AIP should apply to spectrum wherever there is excess demand – and pointed out that Ofcom had reached the same conclusion as long ago as 2007. DTT currently has 65% of the prime UHF spectrum bands IV and V, while MNOs have only 18% - even though they are much more efficient in their usage. It was wrong that broadcasters should have no price incentive to use their spectrum efficiently. MNOs are forced to pay billions of pounds through auctions and fees.
- 3.44 Vodafone said AIP was a “tried and tested” principle and Ofcom had no reason to depart from it.

*Ofcom response*

- 3.45 We had anticipated that broadcasters would express their opposition to the principle of AIP, as they had done ahead of the original 2007 statement. We note that the arguments presented in some submissions have been updated from 2007 to reflect new and anticipated environments for broadcasting. However, the core arguments are similar to those considered in 2007.
- 3.46 As stated above, it was not the intention of this Consultation process to re-address the principle of applying AIP, except in the context of its introduction (or not) after the end of 2014.
- 3.47 Our overall policy remains that determined through the 2007 statement i.e. that spectrum used for broadcasting should be paid for in the same way as spectrum used for other purposes – and that AIP is an appropriate pricing mechanism. Though

we note the opinions expressed by broadcasters, we remain of the view that AIP is intended to create on-going (long term) incentives for efficient use of spectrum. In publications since the 2007 statement, including the Strategic Review of Spectrum Pricing (SRSP)<sup>4</sup> we have consistently emphasised this long term nature of the pricing incentives.

- 3.48 As we explained in the Consultation, it was anticipated in 2007 that broadcast multiplex operators would, by 2014, be operating under new long-term licences with certainty of tenure over their spectrum holdings. In those circumstances, it would be possible to set an appropriate and consistent level of annual AIP for the remainder of their new licence periods. AIP would then serve as an incentive for broadcasters to use the spectrum as efficiently as possible and/or free it up for more valuable uses.
- 3.49 We anticipate this will be the position once implementation of our UHF strategy has been materially progressed (around 2020). In those circumstances, AIP will again become the appropriate means to set charges for spectrum used for broadcasting.
- 3.50 However, we intend to consult again on all aspects of AIP before it is introduced. This will include consulting on whether or not AIP remains appropriate. We will consider in full the arguments broadcasters have submitted on the principle of AIP (plus any additional arguments that may arise in the intervening period).

*Question 3: Do you agree with our proposals to apply a fee for spectrum used for national DTT, in the meantime, based on the cost of administration instead?*

- 3.51 There was some divergence in the responses of broadcasting organisations on this question. The multiplex licensees – i.e. the bodies who would have been anticipating full AIP from the end of 2014 – broadly accepted the proposal to pay cost-based fees instead. However, some of the broadcasters who do not hold multiplex licences – i.e. the client companies paying for multiplex capacity - expressed reservations. Some said they already paid high fees for ‘slots’ on the DTT platform and feared additional charges would be passed through to them.
- 3.52 The BBC and Channel 4 said if cost-based fees were applied they should be roughly in line with those set for the recent award of interim multiplex licences in the 600 MHz band.
- 3.53 There was anxiety among a number of other broadcasting respondents that the level of fees was unclear – and some reserved judgement on the proposal until that was clarified. Channel 5 said fees were already recouped through WTA licence payments, and additional charges were unnecessary. S4C said if fees were passed through by multiplex operators, it would affect programme budgets. Some non-PSB broadcasters said there should be no discount for PSBs – all channels should be treated equally.
- 3.54 There was also divergence of opinion among MNOs and others who responded to this question. BT and Vodafone said they agreed with the proposal. EE disagreed and said full AIP should be applied consistently for all. Three and the Mobile Broadband Group did not address the question directly, but made it clear in their

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<sup>4</sup> <http://stakeholders.ofcom.org.uk/consultations/srsp/>

general response that they did not support reduced fees for broadcasting use of spectrum.

*Ofcom response*

- 3.55 As stated throughout this document, we consider it an important principle that users of spectrum – a scarce resource – should pay an appropriate fee.
- 3.56 In line with the principles established in the SRSP fees should be set, at the very least, at a level which allows Ofcom to reflect its costs in managing the spectrum i.e. by establishing ‘cost-based fees’. Having concluded that full AIP, is not the right pricing mechanism for DTT in the short-term (until around 2020) we have therefore concluded that the application of a cost-based fee is appropriate, as proposed in the Consultation.
- 3.57 It is not the function of this Statement to determine the levels for cost-based fees for particular industry sectors, or to set out the basis on which those fees will be calculated. This will be the subject of a further consultation later this year (2013).
- 3.58 However, in response to comments by the BBC and Channel 4, it is important to note that our statement on the 600 MHz award<sup>5</sup> set a fee for interim multiplexes at £180,000 to cover the period up to the end of the minimum licence term (31 December 2018). This represented a *contribution* towards the costs of making the award plus Ofcom’s annual administration costs. The statement made it clear that this figure cannot be seen as a precedent for the approach we might take to developing cost-based fee proposals more generally, where we expect to propose consideration of a broader definition of our spectrum management costs.

*Question 4: Do you agree that charges based on the costs of managing the spectrum should be applied to DAB radio and to local TV broadcasting?*

- 3.59 Most respondents who addressed this question agreed with our proposal to apply cost-based fees to DAB radio and to local TV. Some of those respondents said it was important that these broadcasting users of spectrum should face fees in the same way as DTT.
- 3.60 The Radio Centre welcomed the proposal in our Consultation that AIP should not be applied to DAB radio. In its response, it said the radio industry was expected to invest in technology to support the Government’s digital radio plan and that it would be perverse for AIP charges to be levied in addition to this. It added that since AIP was a mechanism for delivering spectrum efficiency, it was hard to see how it would ever apply to radio, which was already efficient. In its opinion, DTT users of spectrum were now being “let off” AIP well after television digital switchover. Radio users of spectrum should be treated in the same way in respect to any radio digital switchover.
- 3.61 The Radio Centre also queried the basis under which cost-based fees were to be applied. It said Ofcom needed to explain more clearly what the fees were for because the radio industry already paid tariffs for licence applications and renewal fees etc.

<sup>5</sup> <http://stakeholders.ofcom.org.uk/consultations/600mhz-award/statement>



- 3.62 A respondent who wished to remain anonymous said in a non-confidential submission that AIP should be applied to DAB to encourage the take-up of DAB+ technology in the same way that T2 should be encouraged for DTT.
- 3.63 PACT said local TV should be exempted from fees because the industry is in its infancy and revenues are tight. BT and a confidential respondent queried why local TV should not face full AIP, because they felt there was evidence of an opportunity cost in the use of interleaved spectrum – though BT said AIP should not be applied “for now”.
- 3.64 BT said future assessments of AIP for local TV should consider the needs of PMSE and white space technology.

*Ofcom response*

- 3.65 Our Consultation set out the reasons why we believed AIP should not be levied on either DAB radio or local TV. We said an independently commissioned study had identified excess capacity in the spectrum assigned for DAB radio and that this showed there was no evidence of excess demand. AIP is therefore not applicable to DAB radio. Similarly, there is currently no excess demand for spectrum deployed for secondary, interleaved use by local TV. AIP is therefore not applicable for local TV broadcasting. We remain of this view.
- 3.66 However, we acknowledge that this may not always be the case in future, and that AIP may become an appropriate pricing mechanism at some time for either DAB radio and/or local TV. For the present though, we have seen no persuasive argument that anything other than cost-based fees should apply, for the reasons already stated in relation to DTT.
- 3.67 We will consult later this year (2013) on the basis by which cost-based fees will be set and on the level of those fees. It is not therefore the right time to address the matters raised by PACT about local TV.
- 3.68 In relation to DAB radio, we note the current uncertainty over the future direction of radio broadcasting in general. The Government has not yet reached a decision on whether or not to proceed with a radio digital (DAB) switchover - though an announcement is expected in late 2013. If this goes ahead, there will need to be a review of the whole regime of fees for radio – annual licence fees currently apply only to analogue radio.
- 3.69 We think it remains an important principle that spectrum charges should apply to DAB radio in the same way as to other broadcasting uses of the spectrum. However, it will not be appropriate to set cost-based fees for DAB prior to the Government’s announcement on radio switchover.

*Question 5: Do you agree that when full AIP is applied for spectrum used for national DTT broadcasting (once we have materially progressed our proposals for future use of the UHF spectrum) it should be applied gradually, rising over five years.*

- 3.70 Most respondents agreed with the “working hypothesis” set out in our Consultation that AIP should be introduced gradually when it is applied. However, some broadcasters (including Channel 4 and some confidential respondents) said they

were not offering any comment on the proposal because they oppose the whole principle of AIP in broadcasting.

- 3.71 None of the MNOs who responded directly to this question opposed our hypothesis. However, EE and Vodafone said that if fees for broadcasters were to be phased in over time, a similar approach should be adopted for fees charged to MNOs. EE also said it “notes” that the broadcasting sector had already had since 2007 to prepare for the introduction of AIP and so should be quite prepared for the charges.

*Ofcom response*

- 3.72 The Consultation noted that the imposition of charges over a short period of time raises the chance of a shock, which can lead to inefficient decisions about inputs and outputs, and therefore a sub-optimal use of spectrum. Consequently, we set out our working hypothesis – that we would adopt a phased approach to the imposition of AIP for spectrum used by national DTT multiplexes, introducing fees gradually over five years from around 2020.
- 3.73 However, we do not consider the phased introduction of fees to be a default method of implementation. Rather, as set out in the SRSP<sup>6</sup>, we balance the considerations and manage the risks case by case. At the point that AIP-level fees are introduced, it will be necessary for us to reach a view on the case for and against phasing the introduction of these fees. In view of this, we do not consider it necessary or appropriate to reach a firm position at this time as to whether we would phase in AIP-level fees.
- 3.74 We have made it clear we will consult more fully on the details of how AIP should be introduced nearer the implementation date. This remains our position because we believe these detailed points will be better determined in light of circumstances at the time.
- 3.75 The Consultation restated a commitment set out in the 2007 statement that we would consider both the potential effects of AIP on broadcast content, and the steps available to mitigate those effects, before applying AIP. This remains our position.

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<sup>6</sup> Paragraphs 4.50 to 4.54

## Section 4

# Summary and conclusions

- 4.1 Having carefully considered all the responses received in respect to our Consultation on '*Spectrum pricing for terrestrial broadcasting*' we have concluded that we should proceed with the proposals we set out.
- 4.2 We remain of the view that it is right to apply charges to spectrum used for terrestrial broadcasting - and that AIP is, in principle, an appropriate pricing mechanism. However, for the reasons set out in our Consultation - and discussed throughout this Statement - we believe we should delay the introduction of full AIP for DTT broadcasting until we have made material progress on the implementation of our UHF spectrum strategy.
- 4.3 In the short term, we propose instead to apply a pricing mechanism to reflect our spectrum management costs. In line with the principles set out in the SRSP, we believe it is appropriate that the costs of managing spectrum used for broadcasting are borne by broadcasters benefitting from use of the spectrum, and that non-broadcast users of spectrum do not pay a disproportionate share of management costs.
- 4.4 Longer term - once there is greater ability for multiplex operators to respond to pricing incentives – we intend to set AIP-based charges. We will do so once we have materially progressed our proposals for the future use of the UHF spectrum. At that time, we expect charges to be adjusted to AIP, based on the full opportunity cost of the spectrum. We do not currently anticipate that this will occur until after 2018, although we would expect to introduce AIP by around 2020.
- 4.5 We are committed to considering both the potential effects of AIP on broadcast content, and the steps available to mitigate those effects, before applying AIP – particularly in regard to PSB.
- 4.6 We will consult fully on our proposals for the application of AIP before such charges are introduced. We expect to consider at that time whether or not AIP remains an appropriate pricing mechanism for spectrum used for broadcasting.
- 4.7 For DAB radio and local TV, AIP is not currently applicable because there is no excess demand for the spectrum.
- 4.8 We will consult on cost-based spectrum management charges for DTT and local TV later this year (2013). However, we do not expect to consider charges for spectrum used by DAB radio until after the Government has announced its decisions on digital radio switchover.
- 4.9 In summary:
  - We will introduce charges for the use of spectrum for broadcasting from the end of 2014.
  - However, in relation to national digital terrestrial television (DTT) we will not – for now – introduce charges based on the opportunity cost of using the spectrum (AIP). Instead, we will apply a pricing mechanism to reflect our spectrum management costs i.e. 'cost-based fees';

- We will apply this pricing regime until we have materially progressed proposals for the future use of the UHF spectrum. Spectrum charges for DTT broadcasting will then be adjusted to AIP, based on the true opportunity cost of the spectrum. We expect AIP to be in place by around 2020.
- We will not apply AIP to the use of spectrum by either DAB radio or local TV broadcasting from 2014. We will instead apply a pricing mechanism to reflect our spectrum management costs.