



Submission to Ofcom on the Award of the 600 MHz spectrum band

1. Introduction

The BBC welcomes the opportunity to respond to Ofcom's consultation¹ on the award of the 600 MHz band, published on 6 February 2013. Ofcom will be aware that the BBC has a keen interest in ensuring that this spectrum is used in a way that maximises its benefits for UK citizens and consumers. To that end, the BBC, Channel 4 and Arqiva submitted a proposal to Ofcom in response to its March 2012 consultation² on the future use of the wider UHF spectrum. This proposal sought to incentivise increased viewer take-up of more spectrally efficient DVB-T2 receivers (in practice, Freeview HD receivers), proposing the following:

- Arqiva MuxCo would operate two multiplexes in the 600 MHz band for the interim period before any clearance of the 700 MHz band. It would seek to secure both PSB and commercial HD channels to encourage consumer migration to DVB-T2 receivers;
- The BBC would, subject to Trust approval, launch one and possibly two HD services as part of the interim multiplexes from their launch;
- Channel 4 would similarly simulcast one or two television services on the interim multiplexes; and
- Arqiva Transco would build a 20 site network for each interim multiplex, covering an estimated 63% of the UK.

Our proposals also included a commitment to develop a wider package of initiatives to support the take up of DVB-T2 equipment during the interim period.

We re-iterate our view as stated then that these proposals are not an implicit acceptance that the case to clear the 700 MHz band of broadcasting services has been made by Ofcom. Although Ofcom signalled in its November 2012 statement³ on its UHF strategy that it is minded to clear the 700 MHz band for future use by mobile services, we urge it to consider fully the outcome of its forthcoming work on assessing both the costs and benefits of clearing this spectrum of existing broadcasting use.

¹ *Award of the 600 MHz band*, 6 February 2013

² *Securing long term benefits from scarce spectrum resources - A strategy for UHF bands IV and V*, 29 March 2012

³ *Securing long term benefits from scarce low frequency spectrum: UHF strategy statement*, 16 November 2012



2. General comments

We broadly welcome Ofcom's decision to support its long-term UHF strategy by establishing temporary DTT multiplexes in the 600 MHz band until 2026 with one year's notice period which would not be triggered until after 31 December 2018. We agree that this could *potentially* facilitate a more efficient use of this spectrum by incentivising viewer take up of DVB-T2 compatible equipment. As we set out in our joint proposal, this could be achieved by the deployment of high quality free-to-air HD services, promoting viewer migration to DVB-T2 receivers.

However, we are concerned that Ofcom's stated policy goal to "encourage consumer take-up of receiver equipment which makes use of these [DVB-T2 and MPEG4] more efficient technologies"⁴ could be undermined by its proposed approach to awarding the spectrum. We are not convinced that the proposed non-technical licence conditions would necessarily lead to services of sufficient quantity or quality such that viewers would be incentivised in any significant number to upgrade.

The BBC, together with Channel 4 and Arqiva, clearly shares Ofcom's objective of promoting increased take up of more efficient technologies through the broadcast of additional HD services in the 600 MHz band. We therefore set out in our answers in this submission how we believe the risk of regulatory failure could be minimised. In particular we suggest that:

- Ofcom should review its proposal to award this spectrum via an auction, and should reconsider the alternative option of a beauty contest. We welcome Ofcom's commitment to putting this spectrum into use as quickly as possible. However, we are also concerned that the proposed approach could lead to a quick but poor outcome. A beauty contest would more likely lead to an outcome aligned with the objectives set out by Ofcom than an auction, albeit on a longer timescale; and
- More robust and specific service obligations should be attached to the interim use of the 600 MHz band, stipulating the roll-out of more HD services and more ambitious coverage obligations than are currently proposed by Ofcom.

⁴ *Award of the 600 MHz band*, paragraph 1.5



3. Responses to questions

Question 1: Do you agree with our proposal not to include Channel 36 in the spectrum to be awarded?

Yes. On the basis that Channel 36 is not needed to establish two DTT multiplexes in the 600 MHz band, we can see no reason to object from it being excluded from the award.

Question 2: Do you agree that the 600 MHz band should be awarded as a single lot?

Yes. We agree that that the 600 MHz band should be awarded as a single lot.

Question 3: Do you agree that the licence should have an end date of 2026, with a minimum term until 31 December 2018 and a clause enabling it to be revoked after that date, subject to at least 12 months' notice having been given.

We agree with the proposals on minimum term and notice period. In terms of the proposal for an end date of 31 December 2026, we accept that synchronising the end date of the interim multiplexes with the end date of three of the existing six multiplex licences terms in 2026 is a reasonable approach. However, we feel it would also be reasonable to align the licence *duration* with those of the other multiplexes, ie, to set it to be 12 years as well, leading to an end date in between those of the existing multiplexes. It would also give Ofcom flexibility to award the licence under the Broadcasting Act, in line with the other multiplexes, rather than under the Wireless Telegraphy Act.

Question 4: Do you agree with the proposed service obligations for the licence, including roll-out and coverage obligations to ensure 50% UK coverage (and a minimum 25% in each nation)??

We have some significant concerns over these proposals in that they are likely to be inadequate, in themselves, to ensure that Ofcom's meets its stated policy objective of encouraging viewer take-up of more efficient technologies.

We agree with Ofcom that it would be wholly undesirable for a licensee not to subsequently deploy DTT services in the 600 MHz band. However, there is a risk that the proposed modest service obligations may lead to unattractive offerings to potential viewers. For example, we are surprised that only one video stream (which need not be HD) is being mandated. Furthermore this might only be available to 10% of UK households in the first year and 50% of UK households by the end of year two.



We recognise and support Ofcom's objective of ensuring that the service obligations should be achievable and not onerous so as to not make the multiplexes unsustainable, given the fragile economics involved. However setting the obligations at such a low base level create a real risk that there will ultimately be no real incentive for viewers to move to DVB-T2 receiver equipment.

We, therefore, suggest that the proposed service obligations could be amended to establish a more robust service offering. In particular, Ofcom should stipulate:

- More challenging coverage obligations than currently proposed to ensure that services are available to as many people as possible as soon as possible;
- More channels than the one that is currently proposed, and that there should be a minimum number of free-to-air HD channels; and
- An obligation for services to be delivered from two multiplexes.

We also note that broadcasting coverage of the 2014 Winter Olympics and Glasgow Commonwealth Games could potentially offer additional incentive for viewers to upgrade to DVB-T2 receiver equipment. There is evidence that consumers buy receiver equipment around major sporting events. Ofcom may therefore wish to reflect on whether there are any provisions they can put in place to ensure that services are available for viewers ahead of these events.

Question 5: Do you agree with our proposals to apply a cost-based fee instead of AIP?

Yes. On the basis of this being temporary access to spectrum and established precedent elsewhere⁵, we consider that AIP would be an inappropriate tool to realise any spectrum efficiencies in this instance. Therefore cost-based fees would be a better basis for spectrum charging.

Question 6: Do you have any other comments on the non-technical licence conditions that are being proposed?

We have no further comments.

Question 7: Do you agree with the technical licence conditions we propose to include in the licence?

We agree with the proposed technical licence conditions.

⁵ PMSE access to channels 61-69 between 2008-2012 being another example.



Question 8: Do you agree with our proposal not to restrict any party from participating in the award process?

We agree with and welcome Ofcom's assessment in paragraph 7.12 that a non-DTT applicant "winning the spectrum for strategic purposes" would represent a "potential harm to competition".

However, we are not persuaded that Ofcom's proposed service obligations or the short-term licence duration provide any real disincentive on such a bid from emerging. In particular, we consider that the strategic benefits for a rival platform applicant could well outweigh the costs involved when the modest service obligations are taken into account.

With that in mind, we repeat our view that Ofcom should set more robust service obligations to ensure that its public policy objectives for the 600 MHz band are met. We further urge it to identify any anti-competitive behaviour by applicants when assessing compliant ITAs and to take any necessary action to minimise the risk of regulatory failure.

Question 9: Do you have any comments on the proposed award process in the case of a single compliant Notice of Intention to Apply?

We agree with the process proposed by Ofcom in the event of a single compliant Notice of Intention to Apply.

Question 10: Do you have any comments on the proposed award process in the case of more than one compliant Notice of Intention to Apply?

Bearing in mind the explicit public policy goals that Ofcom has set out very recently for the DTT platform as a whole and the 600 MHz band interim use in particular, we are not convinced that an auction is the optimal award process in this instance.

Ofcom dismissed the idea of a beauty contest in its consultation on the basis that it would be time-consuming. A fast deployment of DTT services in 600 MHz is a desirable outcome but it is more important to establish a sustainable arrangement, recognising the fragile economics and strategic investment required to achieve Ofcom's public policy goals. Whilst we recognise that an auction is likely to be the quickest way of releasing spectrum to the market, this should be balanced with ensuring that the most efficient outcome is realised in light of Ofcom's own objective of incentivising increased take-up of more efficient consumer equipment. The quickest outcome is not necessarily the best outcome.



We note that Ofcom decided on the future spectrum management of programme making and special events (PMSE) in 2010 to award spectrum to a band manager through a beauty contest. Similar to the interim use of the 600 MHz band, this was decided to secure specific public policy goals and was to be under the auspice of the WT Act.

Alternatively, a 12-year multiplex licence could be awarded by beauty contest under the Broadcasting Act, in the same way that the Local TV multiplex licence was awarded earlier in 2013. This is also the approach used to award the licences for DTT multiplexes B, C and D and also DAB multiplexes, so there is relevant precedent.

Bearing in mind the policy objectives in this case, we consider that a beauty contest approach is proportionate and justified.