

Ofcom Consultation

British Entertainment Industry Radio Group (BEIRG)

Spectrum Pricing: A framework for setting cost based fees - Response

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Spectrum Pricing: A framework for setting cost based fees

BEIRG Response

Financial Capability of Programme Making and Special Events Users (PMSE)

BEIRG is broadly in favour of the principles proposed by Ofcom in this consultation.

The PMSE sector, as one of the cost based licence classes under review, is concerned about the impact that changes to spectrum prices might cause. This is because the PMSE sector comprises of small scale, disparate users who are unable to pay large spectrum access fees.

PMSE users license spectrum on a temporary basis in very small geographic locations. There are hundreds of thousands of PMSE users across the UK, all of whom need to access the spectrum in this way. It is not efficient, or possible, for one user to buy the rights to frequencies in a particular location, because of the transient nature of PMSE use. The huge variation in types of PMSE users makes the sector very different to other spectrum users, such as DTT broadcasters or mobile network operators. Ofcom should be aware of the need to cater for all types and sizes of current users in order to accommodate the maximum number possible.

PMSE is an industry which lacks substantial financial support for individual users. It is, therefore, important that Ofcom keeps in mind the objectives of protecting the PMSE sector from excessive prices and guaranteeing continued spectrum access for PMSE. BEIRG therefore welcomes Ofcom's plan to develop a cost allocation methodology to establish a robust, proportionate and fair attribution of spectrum management costs. We call on Ofcom to protect our industry from disproportionate pricing changes or untenable mechanisms by which to obtain cost based fees.

PMSE is unable to pay for, or afford to the same degree, access to spectrum in the same way as broadcasters can. The sector is not able to compete via full market mechanisms for the spectrum they use. This will have to be taken into consideration by Ofcom as part of any plans implemented for altering cost based fees. Ofcom have based past opportunity cost estimates on what 'alternative users' would be prepared to pay for it. When assessing opportunity costs, Ofcom must be certain that these alternative users do exist, and must also be certain about what they would be prepared

to pay. Inaccurate opportunity costs could artificially price the PMSE sector out of spectrum for which there would be no other users prepared to pay the same price.

It is worth noting that in London there is already a great deal of competition over spectrum. Spectrum prices are rising due to "congestion", and, particularly on UHF, licence applications are being rejected due to congestion. However, if Ofcom plans to implement cost based fees from 2015/16 onwards, it must ensure that the PMSE sector is never priced out of the spectrum market, whether through excessive Administered Incentive Pricing (AIP) charges, or by losing out to alternative users of the band manager's spectrum who have deeper pockets. Otherwise, PMSE will find its already limited access to spectrum in London and other high demand areas removed entirely.

Implementation of Fees

BEIRG agrees with Ofcom's proposal to examine existing licensing regimes and fee structures as part of the review, and urges it to take these into account as part of its plans to set any revised fees. We believe that licensing remains the best way for PMSE users to contribute to the fee payment for the spectrum that they utilise. In addition, this helps to protect legitimate users from interference from unauthorised applications.

BEIRG believes that excess PMSE demand for spectrum should be dealt with by the band manager using non-pricing methods, particularly if Ofcom proposes to assess whether there is an opportunity cost to the spectrum based on competing PMSE use. Ad hoc price increases are unacceptable as a method of dealing with excess PMSE demand. A deep understanding of the industry, operational expertise, detailed planning and cooperation between the band manager and end-users and amongst end-users will be required to deal with PMSE demand using non-pricing methods.

BEIRG believes that the practicalities of implementation, including Ofcom's implementation costs, and the cost of collecting fees could form an excessive part of the overall fee before introducing or resetting new fees for PMSE.

Furthermore, the benefits of PMSE use of spectrum, obtained from a socio-economic standpoint, are of great advantage to UK PLC and society overall. The UK creative industries, which are supported by PMSE, currently contribute £36 billion annually to the economy and are responsible for providing 1.5 million jobs. Upwards of 90,000 requests for PMSE spectrum access are made to the licensing band manager in the UK each year. PMSE is an industry comprising many individual

users, often with low levels of funding available. An upwards adjustment to fees that might more fully reflect Ofcom's spectrum management costs would risk damaging the delivery of this industry and the jobs and income it provides. We believe that the PMSE sector clearly qualifies as a user which should be exempt from an upwards adjustment because of its economic contribution.

With regard to licencing for other potential UHF TV band users, BEIRG also questions the justification behind Ofcom's intention not to charge WSDs for licence use within its future plans for their implementation. Ofcom must understand the implications and effects on other users that would arise from allowing unlicensed WSD to operate, which risk subjecting legitimate spectrum users to interference from potentially unauthorised applications.

BEIRG welcomes Ofcom's phased approach to the implementation and setting of cost based fees, which allow Ofcom to continue to build its understanding of costs over time, as recognised by this consultation.

Further to this, the PMSE sector would need time to adapt to any new arrangements, particularly as many end-users will not be aware of the changes to their spectrum administration. An initial year of 'bedding in time' will also allow the band manager to communicate with PMSE users and inform the sector of any potential upcoming changes.

Administered Incentive Pricing (AIP)

BEIRG acknowledges that the primary focus of this consultation is not on AIP, but would nonetheless like to take this opportunity to reinforce its position on this issue. Phasing in AIP to full opportunity cost over time is an artificial and imprecise method of ensuring that prices for spectrum access increase toward market rates gradually. This could result in a cliff edge for the PMSE industry when protected access is removed. Opportunity cost estimates are often inaccurate and change over time. One risk is that PMSE users could be unexpectedly be priced out of the market in 2018 if the AIP for PMSE spectrum does not represent what competing users would be prepared to pay for it.

In addition, the potential for larger companies with greater funds than PMSE to buy spectrum currently used by our industry, in order to deploy as yet undeveloped technologies, cannot be factored into future opportunity costs, which only take into account existing viable technologies. AIP should not be imposed at the expense of ongoing PMSE access to sufficient quality and quantity of spectrum that is the essential raw material for this sector, with all the employment, social, cultural and economic activities that it supports.

If Ofcom intends to help the PMSE sector move to market-based spectrum access and use spectrum more efficiently by phasing in AIP charges to full opportunity cost, there must be an incentive for PMSE users to buy licences. Otherwise, the band manager will not have a viable business model. Illegal PMSE use of spectrum will remain high and AIP charges would therefore increase. This will force the band manager to increase licence fees for the small minority of PMSE users who do pay for a licence, which will in turn force those same PMSE users to either operate illegally or reduce their spectrum use, the latter of which will have the consequence of either reducing production standards dramatically or prevent production from happening at all. In turn, these actions from the PMSE users forced to pay higher prices will reduce the band manager's revenue base to the extent that it may have to return the spectrum to Ofcom (since it could not afford to pay the AIP charges), the result of which will be a reduction in spectrum available to the PMSE industry, whether licensed or unlicensed. If this process continues (as it would in absence of an enforcement mechanism), the PMSE sector would lose access to spectrum, which would lead to market failure.

BEIRG would therefore strongly advise against the implementation of this pricing mechanism over a cost based fees framework.

Conclusion

In general, BEIRG is supportive of Ofcom's principles in terms of setting cost based fees. It urges Ofcom to consider the impact that spectrum pricing changes could have on the PMSE industry. As a consequence of the disparate and small-scale makeup of the sector, users are unable to pay large spectrum access fees. It is very different to other, larger spectrum users, and therefore requires a proportionate and fair attribution of spectrum management costs. Ofcom's plan to develop a cost allocation methodology is therefore a positive step towards ensuring PMSE is protected from disproportionate pricing changes or untenable mechanisms by which to obtain cost based fees.

The socio-economic benefits of PMSE's use of spectrum are of great advantage to UK citizens, and BEIRG believes that this must be protected for the future as part of any cost based fees framework. Licensing should remain the best way for PMSE users to contribute to the fee payment for the spectrum that they utilise. BEIRG is wary of the possibility of alternative pricing mechanisms, such as AIP, as this could have a negative impact on PMSE and the affordability of licenses to operate in spectrum.

Regardless of how Ofcom decides to implement cost based fees from 2015/16 onwards, it must ensure that the PMSE sector is never priced out of the spectrum market. A phased approach to the

implementation and setting of cost based fees is also welcomed by BEIRG as part of any changes to spectrum pricing.

British Entertainment Industry Radio Group

The British Entertainment Industry Radio Group (BEIRG) is an independent, not-for-profit organisation that works for the benefit of all those who produce, distribute and ultimately consume content made using radio spectrum in the UK. Venues and productions that depend on radio spectrum include TV, film, sport, theatre, churches, schools, live music, newsgathering, political and corporate events, and many others. BEIRG campaigns for the maintenance of 'Programme Making and Special Events' (PMSE) access to sufficient quantity of interference-free spectrum for use by wireless production tools such as wireless microphones and wireless in-ear monitor (IEM) systems.

As well as being vital in producing live content, wireless PMSE technologies play a key role in helping to improve security and safety levels within the entertainment industry and other sectors. Their benefits include improving the management of electrical safety, the reduction of noise levels, the development of safety in communications and reducing trip hazards as well as providing an essential tool for the security orientated services. Wireless equipment and the spectrum it operates in are now crucial to the British entertainment industry.

BEIRG is a member of the Association of Professional Wireless Production Technologies (APWPT)¹, which promotes on an international level the efficient and demand-driven provision and use of production frequencies for professional event productions, as well as safeguarding such production frequencies for users in the long run.

¹<http://www.apwpt.org/>