



Notice of Ofcom's proposal to
make a limitation order in
connection with the potential
award of the 600 MHz spectrum
band

	Consultation
Publication date:	29 April 2013
Closing Date for Responses:	28 May 2013

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Section 1

Notice

- 1.1 On 6 February 2013 Ofcom published its Consultation, “*Award of the 600 MHz spectrum band including request to stakeholders to notify intention to apply*”¹ (“the Consultation”), setting out proposals for awarding the 600 MHz spectrum band. In particular, we proposed awarding a single licence for the purposes of establishing Digital Terrestrial Television (“DTT”) multiplexes in the 600 MHz band and invited stakeholders to submit a Notice of Intention to Apply (“NoITA”) if they were interested in holding such a licence.
- 1.2 Ofcom received one completed NoITA. We are currently in the process of considering the consultation responses received, and will decide whether to proceed with awarding the spectrum as proposed, and if so on what terms, in light of those responses.
- 1.3 If we do decide to proceed with the award of the spectrum we will award a wireless telegraphy licence for equipment operating within the 600 MHz band (550-606 MHz, but excluding Channel 36 – i.e. the frequencies between 590 and 598 MHz). As we have received only one NoITA, the process and rules for the award of licence would be in accordance with the Wireless Telegraphy (Licensing Procedures) Regulations 2010².
- 1.4 For the reasons set out in the Consultation, we consider that it would be appropriate to limit the number of licences to be awarded in order to secure the efficient use of the electro-magnetic spectrum and the efficient use, in particular, of this band. Accordingly, under section 29 of the Wireless Telegraphy Act 2006, we would need to make an order, limiting the number of licences granted for the use of this spectrum³. As set out in the Consultation, should Ofcom decide to proceed with awarding the spectrum, there will only be a relatively short period of time in which the licensee will be able to utilise the spectrum. Therefore, if a decision is taken to award the spectrum, it is important that Ofcom is able to grant a licence as quickly as possible. It is for this reason that we are now consulting on a draft Wireless Telegraphy (Limitation of Number of Licences) Order 2013, which we would propose to make should we decide to proceed with the award of the 600 MHz band. A draft of the proposed order is set out at Annex 4.
- 1.5 The general effect of the proposed order is set out at Section 2 of this document.
- 1.6 Subject to the decisions that need to be taken above, and to the responses received from this consultation, Ofcom may make the Wireless Telegraphy (Limitation of Number of Licences) Order 2013.
- 1.7 A paper copy of the proposed draft order may be obtained by request in writing post to John Glover, Ofcom, Riverside House, 2a Southwark Bridge Road, London, SE1 9HA.

¹ <http://stakeholders.ofcom.org.uk/binaries/consultations/600mhz-award/summary/condoc.pdf>

² <http://www.legislation.gov.uk/uksi/2010/1823/contents/made>

³ Section 122(4) of the Act.

Section 2

General effect of the proposed Wireless Telegraphy (Limitation of Number of Licences) Order 2013

The legislative framework

- 2.1 Under section 29(1) of the Wireless Telegraphy Act 2006, Ofcom may, if it considers it appropriate for the purpose of securing the efficient use of the electro-magnetic spectrum to impose limitations on the use of particular frequencies, make an order imposing the limitations. Section 29 implemented Article 7(1)(c) of the Directive of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (the 'Authorisation Directive') (2002/20/EC).
- 2.2 Under section 29(2), an order may specify frequencies for the use of which Ofcom will grant only a limited number of wireless telegraphy licences.
- 2.3 Where Ofcom makes an order under this section, the order must set out the criteria which Ofcom will apply in determining the limit and the persons to whom licences will be granted. Those criteria must be objectively justifiable, not unduly discriminatory, proportionate and transparent (section 29(4)).

The proposed regulation

- 2.4 A draft of the proposed order is set out at Annex 4.
- 2.5 In relation to the award of the 600 MHz band, should Ofcom decide to proceed it may grant a single (or otherwise limited number) of licence(s) for the purposes of establishing DTT multiplexes in the United Kingdom in the 600 MHz spectrum band. Any potential licence will be granted in accordance with the procedure set down in the Wireless Telegraphy (Licensing Procedures) Regulations 2010.
- 2.6 Article 2(3) of the proposed order sets out the criteria for determining the number of licences to be granted. This is that the number to be granted should be the number which is most likely to secure the optimal use of the electromagnetic spectrum, having regard to the matters set out in section 3(1) and (2) of the Wireless Telegraphy Act 2006.
- 2.7 The proposed order would not prevent Ofcom from enabling the concurrent use of the 600 MHz spectrum band for the purposes of Programme Making and Special Events ("PMSE") or for the operation of white space devices ("WSD").

Annex 1

Responding to this consultation

How to respond

- A1.1 Ofcom invites written views and comments on the issues raised in this document, to be made by 5pm on 28 May 2013.
- A1.2 Ofcom strongly prefers to receive responses using the online web form at <http://stakeholders.ofcom.org.uk/consultations/600-mhz-limitation/howtorespond/form>, as this helps us to process the responses quickly and efficiently. We would also be grateful if you could assist us by completing a response cover sheet (see Annex 2), to indicate whether or not there are confidentiality issues. This response coversheet is incorporated into the online web form questionnaire.
- A1.3 For larger consultation responses - particularly those with supporting charts, tables or other data - please email 600Limitation@ofcom.org.uk attaching your response in Microsoft Word format, together with a consultation response coversheet.
- A1.4 Responses may alternatively be posted or faxed to the address below, marked with the title of the consultation.
- John Glover
Senior Policy Advisor,
Spectrum Policy Group
Riverside House
2A Southwark Bridge Road
London SE1 9HA
- Fax: 020 7981 3333
- A1.5 Note that we do not need a hard copy in addition to an electronic version. Ofcom will acknowledge receipt of responses if they are submitted using the online web form but not otherwise.
- A1.6 It would be helpful if your response could include a direct answer to the question asked in this document, which is highlighted at Annex 3. It would also help if you can explain why you hold your views and how Ofcom's proposals would impact on you.

Further information

- A1.7 If you want to discuss the issues and questions raised in this consultation, or need advice on the appropriate form of response, please contact John Glover on 020 7981 3000..

Confidentiality

- A1.8 We believe it is important for everyone interested in an issue to see the views expressed by consultation respondents. We will therefore usually publish all responses on our website, www.ofcom.org.uk, ideally on receipt. If you think your

response should be kept confidential, can you please specify what part or whether all of your response should be kept confidential, and specify why. Please also place such parts in a separate annex.

- A1.9 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and will try to respect this. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A1.10 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's approach on intellectual property rights is explained further on its website at <http://www.ofcom.org.uk/about/accoun/disclaimer/>

Next steps

- A1.11 Following the end of the consultation period, Ofcom may, if appropriate, make the order as soon as practicable.
- A1.12 Please note that you can register to receive free mail updates alerting you to the publications of relevant Ofcom documents. For more details please see: http://www.ofcom.org.uk/static/subscribe/select_list.htm

Ofcom's consultation processes

- A1.13 If you have any comments or suggestions on how Ofcom conducts its consultations, please call our consultation helpdesk on 020 7981 3003 or e-mail us at consult@ofcom.org.uk. We would particularly welcome thoughts on how Ofcom could more effectively seek the views of those groups or individuals, such as small businesses or particular types of residential consumers, who are less likely to give their opinions through a formal consultation.
- A1.14 If you would like to discuss these issues or Ofcom's consultation processes more generally you can alternatively contact Graham Howell, Secretary to the Corporation, who is Ofcom's consultation champion:

Graham Howell
Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA

Tel: 020 7981 3601

Email Graham.Howell@ofcom.org.uk

Annex 2

Consultation response cover sheet

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)

Annex 3

Consultation question

Do you have any comments on the proposed order?

Annex 4

Draft Wireless Telegraphy (Limitation of Number of Licences) Order 2013

DRAFT FOR CONSULTATION

STATUTORY INSTRUMENTS

2013 No. [xxxx]

ELECTRONIC COMMUNICATIONS

The Wireless Telegraphy (Limitation of Number of Licences) Order 2013

Made - - - - - ***

Coming into force - - - - - ***

The Office of Communications (“OFCOM”) make the following Order in exercise of the powers conferred by sections 29(1) to (3) of the Wireless Telegraphy Act 2006 (“the Act”)^(a).

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

Citation, commencement and extent

1.—(1) This Order may be cited as the Wireless Telegraphy (Limitation of Number of Licences) Order 2013 and shall come into force on **[insert date]**.

(2) This Order shall not extend to the Channel Islands or to the Isle of Man.

Limitation of licences

2.—(1) OFCOM shall grant a limited number of wireless telegraphy licences for the purposes of establishing digital terrestrial television multiplexes in the frequency band 550 – 606 megahertz in the United Kingdom.

(2) OFCOM shall apply the criteria set out in paragraph (3) in determining—

- (a) the number of wireless telegraphy licences to be granted in the frequency band 550 – 606 megahertz in the United Kingdom; and

^(a) 2006 c.36.

(b) the persons to whom those licences will be granted.

(3) The criteria that OFCOM shall apply for the purposes of paragraph (2) shall be those which OFCOM considers will be most likely to secure—

(a) the optimal use of the electromagnetic spectrum;

(b) the availability throughout the United Kingdom of a wide range of electronic communications services; and

(c) the availability throughout the United Kingdom of a wide range of television and radio services.

(4) In determining the persons to whom the licences will be granted in accordance with paragraph (2)(b), OFCOM shall also apply the procedure set out in the Wireless Telegraphy (Licensing Procedures) Regulations 2010^(b).

[Dated]

[Signature]

^(b) S.I. 2010/1823.