



Additional Services Licence

Statement following our consultation: *'Advertisement of a national radio Additional Services licence'*

Statement

Publication date: 27 February 2017

About this document

Additional Services are services which use the 'spare' capacity within the signals carrying sound broadcasting services on relevant frequencies, for example to transmit data.

Ofcom is required to do all it can to secure that all the spare capacity on relevant frequencies which is available for Additional Services is used for their provision under Additional Services licences.

There is currently one Additional Service licence. It is held by INRIX UK Ltd and is used to transmit traffic and road travel information to in-car navigation devices, using spare capacity on the national FM frequencies used to broadcast Classic FM. INRIX's licence is due to expire on 28 February 2018.

In December 2016 Ofcom launched a consultation on matters relating to the advertisement of a new Additional Services licence. This statement document explains our decisions on the matters we consulted on. We have published separately at this time, a licence advertisement in the form of a Notice setting out Ofcom's proposal to grant a new Additional Services licence.

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Section 1

Executive Summary

Background

- 1.1 Additional Services are services which use the spare capacity within the signals carrying sound broadcasting services on relevant frequencies, for example to transmit data. They can be provided under licences granted by Ofcom under the Broadcasting Act 1990 (“the 1990 Act”).
- 1.2 The current Additional Services licence for radio, which is held by INRIX UK Ltd (“INRIX”), is used to transmit traffic and road travel information to in-car navigational devices by using the RDS sub-carrier¹ on the frequencies used to broadcast the Classic FM sound broadcasting service under licence INR1. The INR1 licence is held by Classic FM Ltd. The current Additional Services licence is due to expire on 28 February 2018.
- 1.3 In December 2016 Ofcom launched a consultation on matters relating to the advertisement of a new Additional Services licence.² This final statement document explains our decisions on the matters we consulted on. A new licence is advertised³ alongside the publication of this document.

The consultation

- 1.4 The purpose of our consultation document was to seek views on the aspects of the proposed licence over which Ofcom has discretion. These are:
 - whether the new licence should have a shorter duration than the maximum possible in the circumstances;
 - the determination of the amount of spare capacity available for the provision of the Additional Service under the proposed new licence; and
 - the level of the (annual) payment to be made by the new licence holder based on a specified Percentage of Qualifying Revenue (“PQR”).

A total of four questions were asked about these matters.

- 1.5 The consultation document also set out the legal position on certain other matters relating to the proposed new licence. These included the process Ofcom will follow in considering applications for the licence and making an award decision. What we said on these matters was for the benefit of stakeholders. They were not matters on which we consulted but we invited stakeholders to comment on what we said.

¹ RDS (Radio Data System) is a communications standard used to embed small amounts of digital information in conventional FM radio broadcasts, a sub-carrier is the sideband of a frequency’s carrier wave (the receivable signal).

² <https://www.ofcom.org.uk/consultations-and-statements/category-2/advertisement-of-a-national-radio-additional-services-licence>

³ in the form of a Notice issued under section 116(1) of the 1990 Act

- 1.6 We received two responses to the consultation. One was from an individual and the other from INRIX.

Ofcom decisions

- 1.7 Ofcom's decisions on the matters set out in paragraph 1.4 above, are summarised in the paragraphs immediately below. In section 2 of this statement we set out more fully what we proposed in our consultation document, what consultation respondents said about our proposals, our consideration of those responses and our decisions.

Duration

- 1.8 Neither consultation respondent disagreed with, nor offered counter-arguments to, Ofcom's proposal to grant the new licence for a maximum duration that will end when sound broadcasting service licence INR1 (for Classic FM)⁴ ends. We have therefore decided that the new licence should have the maximum duration we proposed.
- 1.9 Accordingly, the new licence will be for a maximum period of just under four years,⁵ but subject to earlier termination for any reason (as explained elsewhere in this statement and in the advertisement for the licence and accompanying draft licence terms).

Relevant frequency and spare capacity

- 1.10 Ofcom's proposed determination in the consultation was that the extent and nature of the spare capacity should remain the same. In making this determination we had to have regard to any need of the Classic FM licence holder, Classic FM Ltd, to be able to use part of the signals carrying its service for its own purposes. Both respondents accepted this position and agreed with our proposal.
- 1.11 Accordingly, Ofcom determines that the spare capacity within the signals carrying the Classic FM sound broadcasting service on the relevant frequency or frequencies available for the provision of Additional Services under the new licence will be as proposed in our consultation document. That is, the same as under the existing Additional Services licence, and using the same spare capacity. This spare capacity is set out in Annex 2 to this statement. It is also set out in the advertisement of the new licence.

PQR

- 1.12 We asked questions about our proposal to set the PQR at 4%. Having considered the consultation responses, Ofcom's decision is that 4% represents an appropriate PQR for the licence. We consider that this level of PQR would be consistent with our duties to secure the optimal use of the spectrum.

⁴ National Sound Broadcasting licence INR1 (AN001), currently held by Classic FM Ltd.

⁵ from 1 March 2018 to 23 February 2022, unless the licensee agrees a different start date with Ofcom (and the maximum duration of the licence will shorten if the start date is later).

Section 2

Additional Services licence

Introduction

- 2.1 Last December Ofcom published a consultation with regard to the forthcoming licensing of the (radio) Additional Services licence. The purpose of our consultation document was to seek views on the aspects of the proposed licence over which Ofcom has discretion. These are:
- whether the new licence should have a shorter duration than the maximum possible in the circumstances;
 - the determination of the amount of spare capacity available for the provision of the Additional Service under the proposed new licence; and
 - the level of the (annual) payment to be made by the new licence holder based on a specified Percentage of Qualifying Revenue (“PQR”).

Licence duration

- 2.2 In our consultation document Ofcom proposed that the new licence should have a maximum duration of just under four years (running from 1 March 2018 until 23 February 2022) so that it expires when the Classic FM sound broadcasting service licence would expire, rather than being any shorter. We set out our view that the proposed licence may not, under the current legal framework, be longer than the period proposed. We made clear we were consulting on the proposal that the licence should not be any shorter.

Consultation Proposal

- 2.3 We asked in the consultation document:

“Should the duration of the Additional Services licence be shorter than is proposed? If so, please comment on how long you consider it should be and explain why that is the case, providing any evidence you might have to support your analysis.”

- 2.4 We received two responses to this question, one from an individual and one from INRIX. Both agreed that the duration should not be shorter than proposed.

Grounds for proposal

- 2.5 In support of our proposal in the consultation document we noted that the new licence would be for the provision of an Additional Service using the spare capacity in the signals on the frequencies on which the Classic FM sound service would be broadcast under licence INR1, should Classic FM Ltd accept the terms of renewal of that licence. This relationship with the service provided under licence INR1 limits the duration for which Ofcom could license any new Additional Service.

- 2.6 The renewed licence INR1 will run for five years from 24 February 2017 (subject to various termination provisions). Reading relevant provisions of the 1990 Act⁶ in the light of the High Court’s 2010 judgment in the case of *Data Broadcasting International Limited (1) Simpleactive Limited (2) v Office of Communications (Ofcom)*,⁷ the new Additional Services licence could only be granted for the same period (or, rather, so it ends at the same time).
- 2.7 What these provisions and this judgment make clear is that an Additional Service licence is inextricably linked to the licence for the sound service on whose frequency it is carried. An Additional Service and its licence can only exist where there is a sound broadcasting service on a relevant frequency, and a licence for it. The former depend on the latter, and must end if the latter ends. Accordingly, the new Additional Service could be licensed for a maximum of around four years (running from 1 March 2018 until 23 February 2022 when the renewed INR1 licence will expire).⁸
- 2.8 That is not the end of the matter so far as the duration of the new Additional Services licence is concerned, however. Also relevant are the provisions of sections 97A, 97B and 105A of the 1990 Act. These could have the effect of bringing to an end, effectively on two years’ notice, both the renewed licence INR1, and the new Additional Services licence, earlier than they would otherwise expire. This would occur either because both are terminated under sections 97A and 97B in connection with digital switchover, (or at least licence INR1 is), or because the renewed INR1 is terminated under section 105A in the event no switchover date is set, and that in turn means the linked Additional Services licence must end.⁹
- 2.9 What these provisions¹⁰ mean is that, in practice, the new Additional Services licence could, run for less than four years, notwithstanding that it is granted for that period.
- 2.10 A question that remained for Ofcom was whether the new licence should be granted for the maximum 4 year period or in fact be granted for a shorter period. When consulting on this question, we took into account that in October 2010 Ofcom consulted on matters surrounding the advertisement of the last Additional Services licence award and this included the duration of a new licence. Among the reasons

⁶ See sections 114(1), 114(2), 114(3) and 116(1)(b)(ii), in particular

⁷ [2010] EWHC 1243 (Admin), at paragraph 75 in particular:

“In any event, additional services are parasitic on spare capacity, as is evident from the definition in section 48 [of the 1990 Act which defines Additional Services for television in the same terms as section 114 for radio..... If there is no analogue signal carrying any television broadcasting service on a particular frequency, there can be no additional service using the spare capacity within that signal.”

⁸ We have noted that during the passage of the Digital Economy Act, the Government said in the Lords, “.... As the digital radio switchover proposes to move all national radio stations to digital-only, the future of the infrastructure, which these traffic services rely on for carriage, is uncertain. That does not necessarily mean that these services cannot continue on FM. The Government accept that there is a case for allowing the additional service licences, under which these traffic services are licensed, to continue on analogue after the switchover; not least because it would provide continuity of service for motorists ...” It appears to Ofcom that the continued provision of an Additional Service using analogue signals after the switchover to digital of the host sound broadcasting service would require a change in the law, which is a matter for Parliament, not Ofcom.

⁹ Similarly relevant, and for similar reasons, are provisions such as section 111 of the 1990 Act about the revocation of radio licences, and any other provision that might result in the termination of a sound broadcasting licence before its expiry date. Given the links between INR1 and the Additional Services licence, a revocation of the former under section 111 would also result in the latter coming to an end.

¹⁰ and others like those referred to in the footnote immediately above.

against the option to reduce further the duration of the licence set out in the 2010 consultation¹¹ were:

- a licensee is likely to want the longest possible licence term available; and
- we recognise that, in an auction situation, the longer the licence, the more bidders there are likely to be for it, and the more they might be prepared to bid.

- 2.11 Based on our current understanding we noted that the picture had changed little since November 2010 (the closure of the 2010 consultation) and so, subject to responses and evidence to its 2016 consultation, Ofcom was minded not to shorten the duration of the new Additional Services licence and proposed that it should run for just under four years.
- 2.12 We invited stakeholders and other interested parties to offer any views on whether the licence should be shorter than the maximum duration within Ofcom's discretion to offer.

Consultation responses

- 2.13 Both respondents agreed that the duration of the new licence should not be shorter than the four years proposed.
- 2.14 The individual respondent noted that the four-year proposal was a "significant reduction" in previously granted licence periods and argued that this presented a "potential hurdle and barrier to entry for any new bidder/licensee" because they would have a shorter term to establish a return on investment. The respondent added "However, we believe that Ofcom should consider establishing a clear set of bid criteria that allows for the successful licensee to be granted an extension to the period of any new license grant, e.g. for at least another 4 four years, should INR1 and consequently its associated sub-carrier be renewed."
- 2.15 INRIX responded preferring the maximum possible duration of the new licence. They wrote:

"INRIX's view is that the Additional Service license should be provided for the full 4 years. Any uncertainty associated with a service provision affects OEMs¹² in their decision to adopt or change technology; A reduction in the license to a period less than the 4 years proposed will create uncertainty and is likely to adversely affect the value of the license. It is for this reason we urge that the full 4 years is made available."

Decision

- 2.16 The individual respondent's point that Ofcom should consider allowing an extension period to the new licence was noted. However, the current statutory framework does not provide for Ofcom to implement such an extension/right of renewal for the Additional Services licence holder.
- 2.17 Having taken into account the consultation responses, in particular, that no respondent disagreed with Ofcom's proposal to grant the new licence for the

¹¹ Consultation: Advertisement of a national Additional Services licence October 2010.

https://www.ofcom.org.uk/_data/assets/pdf_file/0010/51112/additional-services.pdf

¹² Original Equipment Manufacturers

maximum duration that will end when licence INR1 ends, we have decided to advertise the new licence for the maximum period (just under four years). There appear to us, as there did at the time of our consultation document, sound reasons (as set out above), in line with our statutory duties and relevant provisions, for offering the new licence for the maximum duration proposed (that is, to expire when licence INR1 expires and otherwise to end when licence INR1 ends for any reason).

¹³

- 2.18 Licence INR1 has been further renewed with effect from 24 February 2017 and its expiry date will be 23 February 2022. Therefore, the new Additional Services licence will be a licence of a maximum period of just under four years (three years, 11 months and 23 days),¹⁴ but subject to earlier termination for any reason (as explained elsewhere in this statement and in the advertisement for the licence and accompanying draft licence terms).

Spare capacity available

Consultation Proposal

- 2.19 In our consultation document Ofcom proposed that:

2.19.1 subject to final confirmation from the INR1 licence holder we should advertise and in due course award and grant a new Additional Services licence to use spare capacity within Classic FM's allocated frequencies under licence INR1; and

2.19.2 the extent and nature of the spare capacity available to provide Additional Services should be the same as that available under the current Additional Services licence.

- 2.20 We set out our proposed technical specifications for the new licence at Annex 4 to the consultation document and asked:

“Do you agree with Ofcom’s proposed determination of the spare capacity that would be available for the provision of the Additional Service under the proposed new licence?”

- 2.21 Both respondents agreed with the proposal.

¹³ On the basis that the licence period will end earlier if the proposed licence and/or licence INR1 ends earlier **for any reason**. For example, sections 97A, 97B and 105A of the 1990 Act could have the effect of bringing to an end, effectively on two years’ notice, both licence INR1, and the new Additional Services licence, earlier than they would otherwise expire. This would occur either because both are terminated under sections 97A and 97B in connection with digital switchover, (or at least licence INR1 is), or because the renewed INR1 is terminated under section 105A in the event no switchover date is set, and that in turn means the linked Additional Services licence must end. Similarly relevant, and for similar reasons, are provisions such as section 111 of the 1990 Act about the revocation of radio licences, and any other provision that might result in the termination or end of a sound broadcasting licence before its expiry date. Given the links between INR1 and the Additional Services licence, a revocation of the former under section 111 would also result in the latter coming to an end. The same result would also apply if the INR1 licensee surrendered that licence. Any continuation of the new Additional Services licence, and the service under it, beyond the end of licence INR1 would require a change in the law.

¹⁴ from 1 March 2018 to 23 February 2022, unless the licensee agrees a different start date with Ofcom (and the maximum duration of the licence will shorter if the start date is later)

Grounds for proposal

- 2.22 We set out in our consultation document Ofcom's functions and powers under section 114 of the 1990 Act in respect of the Additional Services licence and INR1.
- 2.23 We noted when we considered this issue last time following our October 2010 consultation¹⁵, that a determination that at least the same capacity as was currently available for Additional Services would have a positive impact consistent with Ofcom's main and general duties in performing our radio licensing functions.
- 2.24 In determining the amount of spare capacity available on the relevant frequencies we have to have regard to any need of the Classic FM licence holder, Classic FM Ltd, to be able to use part of the signals carrying its service for providing services which are ancillary to programmes included in its service. Ofcom's preliminary discussions with Global Radio, the parent company of Classic FM, suggested that the same amount of spare capacity will be available on the relevant frequencies.

Consultation responses

- 2.25 Both respondents agreed with the proposal.
- 2.26 The individual respondent noted the current licensees' use of the sub-carrier (i.e. part of the Classic FM transmitted signal) and said that the implementation of widely accepted international standards led them to agree that no change was required.
- 2.27 In agreeing with the proposal, INRIX added that the existing bandwidth was key to continuing to provide their service, suggesting that any reduction in the specified bandwidth would be directly detrimental in terms of repetition rate and performance needed to deliver this service. INRIX urged Ofcom to maintain the previously determined level of capacity.

Decision

- 2.28 Accordingly, having taken into account the consultation responses, Ofcom determines that the spare capacity within the signals carrying the Classic FM sound broadcasting service on the relevant frequency or frequencies available for the provision of Additional Services under the new licence should, for the reasons set out above, be as proposed in our consultation document. That is, the same as under the existing Additional Services licence, and with the same technical specification, as set out in Annex 2 to this document. This is also set out in the advertisement of the new licence.

Payments as a Percentage of Qualifying Revenue

Consultation Proposal

- 2.29 The holder of an Additional Services licence is required, under section 118 of the 1990 Act, to make a payment each year of the amount specified in his cash bid (which is increased annually by RPI) and an additional payment based on a Percentage of Qualifying Revenue ("PQR") determined by Ofcom (and which may be nil). These payments go to HM Treasury.

¹⁵ Consultation: Advertisement of a national Additional Services licence October 2010.
https://www.ofcom.org.uk/_data/assets/pdf_file/0010/51112/additional-services.pdf

- 2.30 Any firm seeking to acquire the licence would need to make an overall assessment of the scale and timing of future costs and revenues as part of drawing up a business plan and the PQR payment would simply represent a cost.
- 2.31 One effect of a positive PQR would be a shift in payments from cash bids to PQR payments. However, there may be a number of reasons why the level of the PQR may do more than alter the relative size of the two payments. This may affect the actual outcome of the award process (including the identity of the winner and the revenues generated) and the behaviour of the winner after the licence has been awarded. We identified a number of issues in the consultation:
- 2.31.1 If the level of the PQR is too high, the licence could become unprofitable (because the cash bid could not be adjusted to be less than zero) and there may be no bidders. This tends to support a zero, or at least low, PQR.
- 2.31.2 A PQR greater than zero gives an advantage to firms with a low revenue/low cost business model compared to rivals with a high revenue/high cost business model. This also tends to support a zero, or at least low, PQR.
- 2.31.3 A PQR greater than zero allows risk-sharing with respect to revenue fluctuations. This could affect different bidders differently. On balance, we did not consider it would be efficient to set a non-zero PQR because it allows risk-sharing.¹⁶
- 2.31.4 It is possible that a non-zero PQR could affect the efficient allocation of the licence as part of this award process, especially if the auction is not very competitive. But it is not clear whether it would improve or worsen the allocation in the auction.
- 2.31.5 A PQR greater than zero could distort the behaviour of the winning bidder by providing a disincentive to business expansion (as each additional £1 of revenue increases its licence payment by £1 multiplied by the rate of PQR). This tends to support a zero, or at least low, PQR.
- 2.32 We considered that these considerations strongly pointed against a high PQR, and argued for a low or zero PQR.
- 2.33 We also noted that the current level of PQR of 4% does appear to have worked reasonably well. There was only one bidder in the auction in 2011. The current licensee, INRIX, has provided useful services to consumers. We are not aware of any problems that have arisen from the current level of PQR.
- 2.34 Based on these considerations, we consulted on two main options:
- setting a PQR of zero; or
 - retaining a 4% PQR as used for the current Additional Services licence.

¹⁶ See paragraphs 5.16 to 5.20 and paragraph 5.29.3 of the December 2016 consultation.

2.35 We asked two questions related to PQR:

“Do you agree with our analysis regarding the factors to take into account when setting the level of the PQR?”

“At what level should we set the PQR?”

Consultation Responses

- 2.36 The two responses did not discuss in much detail the points raised in the consultation.
- 2.37 The individual respondent said Ofcom’s analysis was sound, but that having a licence duration of only 4 years had some bearing on the setting of the level of PQR. The respondent considered that if the term were only 4 years, then to assist any new licensee in establishing a return on investment, the PQR should be set to zero.
- 2.38 INRIX agreed with Ofcom’s analysis and supported a PQR of 4%, saying it maintained the position it held at the time of the last consultation in 2010.

Conclusions

- 2.39 We do not agree with the individual respondent that a PQR of zero necessarily favours a new entrant, or that a PQR of 4% necessarily favours the incumbent. A new entrant may have low revenues in the early years of operation, as it may take time for it to generate revenue. This means it may not need to factor into its auction bid large PQR payments. Conversely, if an incumbent expects to have higher revenues for a period immediately after the award of the licence, then it would have to consider these higher PQR payments when considering its bid in the auction, which will tend to lower its bid. In this way, a higher PQR might even favour a new entrant over the incumbent in terms of winning the licence.
- 2.40 INRIX referred to its submission to the 2010 consultation which included the argument that a PQR of zero would increase the risk of a frivolous or malevolent bidder winning the auction. We believe that it is not clear whether a non-zero PQR would improve or worsen the likely efficiency of the auction, but we do not rule out that a low, but non-zero, PQR could deter some bidders who have a very low value for the spectrum.¹⁷
- 2.41 In light of the above and having reviewed our analysis in the consultation, we consider that that analysis holds good and, on balance, taking all the above considerations into account, have decided to set the PQR at 4%. This is primarily because a low PQR might deter some bidders who have a very low value for the spectrum and because we are not aware of any problems that have arisen from the current level of PQR of 4% which appears to have worked reasonably well.

Award mechanism

- 2.42 We indicated in our consultation document our intention to take a two stage approach to the licence award:
- 2.42.1 inviting cash bids; and

¹⁷ See paragraphs 5.21 to 5.27 and paragraph 5.29.4 of the December 2016 consultation.

- 2.42.2 if there is more than one eligible bidder, considering whether exceptional circumstances exist which make it appropriate for Ofcom to award the licence to an applicant other than the highest cash bidder.

Consultation Responses

- 2.43 Neither respondent commented on our intended approach.

Conclusions

- 2.44 We intend to implement the approach set out in Section 6 of the December 2016 Additional Services licence consultation.

Annex 1

Statutory framework

A1.1 The framework for advertising and awarding an Additional Services licence is set out in the Broadcasting Act 1990 (again, “the 1990 Act”). The relevant provisions are mainly in Chapter IV of Part III of the 1990 Act, although section 100, in Chapter II of the same Part, is also key (and section 85, in Chapter I of Part III is also relevant). These set out Ofcom’s functions in relation to Additional Services and their licensing. Also relevant are Ofcom’s general duties, with which it must comply in performing these functions. These are in section 3 of the Communications Act 2003 (“the 2003 Act”).

Ofcom’s duties

A1.2 Ofcom’s principal general duty, when carrying out our radio functions, is set out in section 3(1) of the 2003 Act. It is to further the interests of citizens – all members of the public in the UK - in relation to communications matters; and to further the interests of consumers in relevant markets, where appropriate by promoting competition.

A1.3 To meet this duty, Ofcom is required to secure (amongst other things):

- the optimal use for wireless telegraphy of the electro-magnetic spectrum;
- the availability throughout the UK of a wide range of television and radio services which (taken as a whole) are both of high quality and calculated to appeal to a variety of tastes and interests; and
- the maintenance of a sufficient plurality of providers of different television and radio services.

A1.4 Ofcom must also take into account in relevant cases, amongst other things:

- the desirability of promoting competition in relevant markets;
- the desirability of encouraging investment and innovation in relevant markets;
- the desirability of encouraging the availability and use of high speed data transfer services throughout the United Kingdom;
- the different needs and interests, so far as the use of the electro-magnetic spectrum for wireless telegraphy is concerned, of all persons who may wish to make use of it; and
- the opinions of consumers in relevant markets and of members of the public generally.

A1.5 More specific duties are contained in the 1990 Act. Amongst these is that in section 115(1). This says we must do all we can to secure that, in the case of each relevant frequency, all of the spare capacity available for the provision of Additional Services on that frequency is used for the provision of such services under Additional Services licences.

Ofcom's functions and powers

- A1.6 Under section 85 of the 1990 Act, one of Ofcom's functions is the licensing of additional radio services. This includes advertising, awarding and granting those licences in accordance with Part III of that Act, in particular sections 100 and 114 - 118. Those latter sections set out the powers Ofcom has in order to perform this licensing function, and in the exercise of which it must fulfil its duties.
- A1.7 Section 114 defines what an Additional Service is: any service which consists in the sending of electronic signals for transmission by wireless telegraphy by means of the use of the spare capacity within the signals carrying any sound broadcasting service provided on a relevant frequency.¹⁸ It also defines what "spare capacity" is and provides for Ofcom to determine the spare capacity available for providing an Additional Service.
- A1.8 In making that determination in relation to a relevant frequency on which a national sound service, like Classic FM, is provided, Ofcom must consider any need of the national service provider to be able to use part of the signals to provide services which are ancillary to its programmes services. Section 114 also provides for Ofcom to change, but not reduce, the amount of spare capacity determined to be available in respect of a particular Additional Services licence.
- A1.9 Section 115 contains provisions relating to the licensing of Additional Services. For example, sub-section (6) says every licence to provide a national sound service shall include conditions Ofcom think appropriate for securing that the sound service licensee grants to an Additional Services licensee access to facilities reasonably required to provide the Additional Service.
- A1.10 Section 116 deals with the advertising of, and application for, Additional Services licences. Sub-section (1) requires Ofcom to publish a notice of any proposal to grant a new Additional Services licence including, amongst other things:
- the period for which the licence is to be granted;
 - the sound broadcasting service or services on whose frequency or frequencies the services are to be provided;
 - the extent and nature of the spare capacity which is to be allocated by the licence; and
 - the percentage of qualifying revenue for each accounting period that would be payable by an applicant in pursuance of section 118(1)(c) if it was granted the licence.
- A1.11 Sub-section (3) requires that any application for an Additional Services licence must be in writing and accompanied by (amongst other things) a technical plan indicating the nature of any Additional Services the applicant proposes to provide, its cash bid and such information as Ofcom reasonably require about the applicant's present and projected financial position.
- A1.12 Section 117 sets out the procedure Ofcom must follow in connection with the consideration of applications for, and awarding of, Additional Services licences. It

¹⁸ Classic FM is an example of a sound broadcasting service provided on a relevant frequency

does so by saying that, subject to certain modifications, section 100 of the 1990 Act applies.

- A1.13 These sections make provision for Additional Services licences to be awarded by auction,¹⁹ though one to which certain conditions and qualifications apply. This means that, although in principle the licence is awarded to the person who submits the highest cash bid, there are also some thresholds which must be met by any applicant, and Ofcom has some discretion to determine to whom the licence should be awarded.
- A1.14 There are two thresholds. First, section 117(1)(a) says that, insofar as they involve the use of an electronic communications network, the technical arrangements proposed by an applicant must be acceptable to us. Second, section 117(1)(b) says the services proposed to be provided under the licence must appear to Ofcom to be capable of being maintained throughout the period the licence would be in force.
- A1.15 We can only consider whether to award the licence to an applicant on the basis of his cash bid, where it appears to us to meet these thresholds. Of those applicants that meet them, the primary criterion for awarding the licence is that Ofcom shall award it to the highest cash bidder (and there are provisions for settling ties (by seeking further bids)). But, it is not necessarily the case that the highest bidder wins. Ofcom can choose to award the licence to an applicant who has not submitted the highest cash bid if it appears to us there are 'exceptional circumstances' which make it appropriate for us to award it to that applicant.²⁰
- A1.16 Certain other statutory rules are relevant in the context of this award process. For example, section 86(4) of the 1990 Act says Ofcom must not grant a licence to any person unless we are satisfied they are fit and proper to hold it. Section 88(1) of the same Act provides another example. It says, amongst other things, Ofcom must do all we can to secure that a person does not become a licence holder if he is disqualified from holding that licence by virtue of Part II of Schedule 2 to the 1990 Act. Section 89(1) of the 1990 Act is a third example. It says a person is disqualified from holding an Additional Services licence if they have been convicted within the previous five years of any of a number of specified criminal offences relating to wireless telegraphy transmissions and broadcasting.
- A1.17 Section 118 of the 1990 Act deals with financial payments an Additional Services licensee must make. It says the licence must include conditions requiring annual payment of his cash bid sum (increased by an appropriate percentage each year) and an amount representing the percentage of the qualifying revenue specified in the advertisement of the licence. It also provides for the composition of the qualifying revenue: all amounts which are received or to be received by the licensee or by any connected person and are referable to the right under his licence to use, or to authorise any other person to use, the spare capacity allocated by the licence.
- A1.18 Also relevant are the provisions of the 1990 Act relating to the duration of the Additional Services licences. In particular, sections 86(3), 97A, and 97B:

¹⁹ And do so under a scheme which does not make provision for Ofcom to set an explicit reserve or minimum cash bid price in the auction.

²⁰ There are also provisions which require Ofcom to refer an applicant to the Secretary of State for Culture, Media and Sport for approval if we are concerned that their source of funds means that it would 'not be in the public interest' to award the licence to them.

- section 86(3) says an Additional Services licence must specify a period of no more than twelve years as the period for which it is to be in force;
- section 97A says the Secretary of State may nominate a date for digital switchover - a date after which it will cease to be appropriate for a service to continue to be provided in analogue form - for licences granted after 8 April 2010, including the new Additional Services licence; and
- section 97B provides that, where the Secretary of State nominates a switchover date, Ofcom must vary relevant licences so they end before that date (as long as this, in effect, gives licensees two years' notice of the end of the licence).

A1.19 Section 105A is also relevant, though less directly so. It provides for the possible termination of certain renewed sound broadcasting licences, including (if it is renewed) that under which Classic FM is broadcast, if digital switchover does not occur (either because no switchover date is nominated, or a nominated date is withdrawn and not replaced). In those circumstances, the Secretary of State may give notice to Ofcom fixing a termination date – a date after 31 December 2015 - in relation to specified services (provided under certain renewed licences), including potentially Classic FM. Ofcom would then have to amend the duration of all relevant renewed licences that would otherwise end after the specified termination date, so they end on or before it (again provided that, in effect, we give relevant licensees two years' notice of the end of their licences). This is relevant because it would also bring the licence period of the new Additional Services licence to an end.

Annex 2

Spare capacity

Available RDS capacity

- A2.1 The service is to be operated on the RDS sub-carrier conforming to IEC standard 62106:2009 Ed. 2.0 using one or more of only the following allowable features:
- TDC (Group 5A)
 - Paging (RP) (Group 7A with part of Group 1A)
 - TMC (Group 8A)
 - IH (Group 6A only)
 - ODA (Various allowable Groups: refer to specification)
- A2.2 The group repetition rate available to the Licensee will be, to the extent necessary:
- an average of 2.4 groups/sec, averaged over any one-minute period
 - a minimum of 1 group in any second
 - groups/sec. for consecutive seconds in every five-minute period in every hour;
 - such parts of the overhead signalling capacity in the RDS bitstream, notably group types 3A, as are necessary for use of the above-referenced Additional Services groups.
- A2.3 No further capacity beyond this is to be made available to the Licensee.
- A2.4 The minimum deviation of the FM carrier due to the modulated RDS subcarrier shall be ± 2.0 kHz, and the maximum deviation shall be ± 2.5 kHz.

Annex 3

Computation of qualifying revenue

- A3.1 In section 2 of this statement, consideration has been given to one of the additional payments – the PQR (percentage of qualifying revenue). Ofcom is required under the Broadcasting Act 1990 and Broadcasting Act 1996 to draw up, and from time to time review, a statement setting out the principles to be followed in determining additional payment due in respect of qualifying revenue.
- A3.2 The statement setting out the computation of qualifying revenue published in October 2006 and currently in force may be found at: <https://www.ofcom.org.uk/tv-radio-and-on-demand/information-for-industry/guidance/comp-revenue>