

T-Mobile's response to Ofcom consultation:
Providing Spectrum Information
Implementing the Environmental Information Regulations 2004

November 2009

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Executive Summary

T-Mobile welcomes the opportunity to comment on this consultation.

Ofcom is proposing to release information relating to specific Wireless Telegraphy Act licences as set out in Tables 8.1 and 8.2 of the consultation. T-Mobile has significant concerns in relation to the publication of some licensing information for Point to Point Fixed Links, which are detailed in this response. T-Mobile believes that such sensitive spectrum information for mobile networks should be exempt from release under the Environmental Information Regulations 2004 ('the Regulations') on the grounds of public safety and national security and should therefore not be released.

T-Mobile's comments in this response relate specifically to the information in Tables 8.1 and 8.2 of the consultation. If Ofcom were to consider releasing any additional spectrum information, then the question of whether any of the exemptions in the Regulations would apply to that additional information would need to be considered on a case by case basis; and T-Mobile would expect to be given the opportunity to comment on any information concerning T-Mobile or provided by T-Mobile to Ofcom, as that information may be exempt from release because, for example, it was protected by intellectual property rights.

Some of the information that Ofcom is proposing to release is sensitive spectrum information; it is essential that Ofcom's proposals on the treatment of sensitive spectrum information are in line with Government's work in this area. For example, the Department for Business, Innovation & Skills ('BIS') have recently published proposals on Cyber Security in the Final Digital Britain Report, part of which requires that detailed information relating to critical networks is available only to those that need it and is not available to anyone with criminal intent.

We would recommend that Ofcom work closely with the existing Government national security fora (such as CPNI, EC-RRG and NSIE) to ensure that any information released will not compromise security in any way.

Ofcom are also seeking in this consultation comments on whether further spectrum information needs to be published in order to further the interests of consumers and citizens. Ofcom already publishes extensive information on its website which is valued by industry; we have not identified any further information that is required by industry or that should be published.

Question 1: Is there information that we are planning to release that would be covered under one of these exceptions and if so what is the supporting evidence?

Question 2: Is there information that we are planning to release that would not be in the public interest to do so looking at each exception individually and then in aggregate and if so what is the supporting evidence?

We understand that the information that Ofcom is proposing to release relates solely to licensing information for specific Wireless Telegraphy Licences, as set out in Tables 8.1 and 8.2 of the consultation. T-Mobile's comments relate specifically to that information (and only that information). If Ofcom were to consider releasing any additional spectrum information, then the question of whether any of the exemptions in the Regulations would apply to that additional information would need to be considered on a case by case basis; and T-Mobile would expect to be given the opportunity to comment on any information concerning T-Mobile or provided by T-Mobile to Ofcom, as that information may be exempt from release because, for example, it was protected by intellectual property rights.

T-Mobile holds a number of Wireless Telegraphy Act spectrum licences. T-Mobile's 2G and 3G licences and additionally MBNL's Spectrum Access licence at 10-40GHz are licences for which specific transmitter information is not held by Ofcom and are therefore not covered by Ofcom's proposals in this consultation.

However, T-Mobile's Point-to-Point Fixed Link Licences are licences for which Ofcom does hold information on individual transmission sites. T-Mobile strongly contends that information relating to the specific location and direction of transmission sites should not be released in relation to mobile operators' Point to Point Fixed links. The release of such information would be covered by the exemptions relating to national security and public safety; and we believe that because of legitimate public safety and national security concerns it would not be in the public interest to release this information.

Ofcom has outlined in the consultation the national security and public safety concerns associated with the release of sensitive transmitter information. Some of these arguments were made at length in T-Mobile's and Ofcom's evidence to the Sitefinder case. Point to Point links also raise additional national security and public safety concerns over and above that arising from any information which might be available on Sitefinder.

In summary, the national security and public safety risks that T-Mobile has identified are:

- National security issues: data should not be released which will undermine other Government national security and Cyber Security strategies (see below);
- Criminal activity: Releasing information on key infrastructure could potentially allow all network operators in a particular location to be affected, e.g. there has been an incident in the Maidenhead area where all networks were brought down simultaneously to enable a theft to be carried out. Similar risks would apply to terrorism attacks and CPNI needs to be consulted so as to minimise any security risks.

- Targeted theft: the theft of metal and cables is a major issue for mobile operators and is likely to increase if more information on the location of sites and the equipment installed at those sites is made publicly available. British Transport Police have been involved in this issue, due to similar targeting of rail infrastructure. Their input into this debate could be valuable.
- The illegal installation of equipment such as pirate radio equipment on mobile operators' sites is also of concern to public safety, as this is often done in such a way as to render these sites unsafe for other.

Public safety concerns arise from all of the above;

- a. If the network goes down as a result of any of the above factors then the public will be at risk as they may be unable to contact the emergency services;
- b. Criminal activity such as theft or vandalism leaves dangerous and unprotected electrical connections exposed, creating a risk to members of the public.
- c. Where it is the disruption of communications services that is targeted in order to enable other criminal or terrorist activities to be undertaken, this activity clearly also poses a security and public safety threat.
- d. Attacks on sites also create serious health and safety risks to the T-Mobile personnel who are required to attend and deal with the damaged antennae and other infrastructure.

Confidential Annex 1 to this response sets out further details and evidence supporting T-Mobile's arguments that Point to Point Fixed Links data should not be released. Confidential Annex 2 identifies the specific licensing information relating to Point to Point Fixed Links that should be exempt.

In the Final Digital Britain Report, BIS set out Government's intentions regarding Cyber Security, part of which requires that detailed information relating to critical networks is available only to those that need it and not available to anyone with criminal intent.

The UK's National Security Strategy describes how 'cyber security' cuts across almost all the national security challenges that it identifies, and the need to address them in a coherent way. To this end, the Government is developing a Cyber Security Strategy to build a safe, secure and resilient cyber space for the UK, through both the beneficial exploitation of cyber space and the reduction of risks posed by those who seek to do the UK harm: the forthcoming Cyber Security Strategy will set out how the Government intends to approach this task. (Para 28 of the Final Digital Britain Report)

It is essential that Ofcom's proposals on the treatment of sensitive spectrum information are in line with BIS proposals in this area and also with the work of the national security fora such as CPNI, EC-RRG and NSIE. We would recommend that Ofcom work closely with these fora to ensure that any information released will not compromise security in any way.

Question 3: We would welcome comments and views on the information we already make available, in particular areas where stakeholders believe this could be improved.

We have no particular comments on this question.

Question 4: We are interested in the views of stakeholders on what information in addition to that contained in Annex 8 they think would help to ensure optimal use of the electro-magnetic spectrum, and on the impact the disclosure of this information might have on licence holders.

T-Mobile is not aware of further information that would help to ensure the optimal use of the electro-magnetic spectrum.

We also note that the Regulations require Ofcom to progressively make available the environmental information it already has in its possession (subject to the exclusions); it does not give Ofcom a mandate to start gathering further data that may then be released. For the national security and public safety reasons outlined above, we do not believe that any further spectrum information should be made publicly available.

Question 5: We are interested in views regarding the areas where we should look towards focusing future research and studies on, and the benefits this will bring to industry, citizens and consumer? What information could we provide to encourage innovation and research?

As has been the case in the past, we anticipate that universities will be performing most of the long and medium term research in this area with industry undertaking development in the short to medium term. There may be opportunities for Ofcom to fund some research through the Spectrum Efficiency Fund.

Question 6: Would stakeholders find information on the price paid for a traded spectrum licence useful and believe that we should make the provision of this mandatory?

T-Mobile can see no benefit in the provision of this information being mandatory. We can, however, foresee disadvantages as it would not always be possible to validate the information provided. Furthermore, there are circumstances eg where companies are sold where it could be difficult to establish what value to attribute to a spectrum licence out of the price paid for the company as a whole. Requiring such a valuation would be an unnecessary and onerous obligation on the parties concerned.

For these reasons, T-Mobile believes that making the provision of information on the price paid mandatory would discourage trading.

Question 7: If yes, what would be the most appropriate way for us to collect these data, for example asking for the specific value, using a check-box system? In what format should information be provided, for example displayed in aggregate format?

For the reasons stated above the information should not be collected.

Question 8: Do you have any views about the regulatory burden that this would place on the parties involved in a trade, for example would the cost of providing information be prohibitive? Do you have any concerns about the confidentiality of this data?

T-Mobile considers that the collection of information would be an unnecessary use of resources, as set out above there will be a number of circumstances where the price for the spectrum is not clear (for example when a company is sold) and it could require significant resources to determine and agree a price.

Such information would not fall under the definition of “Environmental Information” in the Regulations, and so would not be required to be released under the Regulations. T-Mobile cannot see any reason for Ofcom to create a new legal obligation for this information to be provided. This would be an unnecessary and disproportionate regulatory burden.

Question 9: We are interested in comments on whether the publication of spectrum usage data would be beneficial to stakeholders, what should be included and what format this should take.

The quality of spectrum is an important consideration when assessing the viability of a particular application. T-Mobile is grateful for the information provided by OFCOM in the past in this context for spectrum which is to be auctioned.

When trading spectrum it should be a relatively straightforward due diligence and contractual negotiation for the parties to agree the level of interference previously observed and to protect the buyer.

The data produced by the CRFS research and unmanned monitoring stations is of little value to us as either as cellular operators or potential purchasers of spectrum. This is because the collected data is generic and limited in its geographic reach and time of day for CRFS information.

In the case of cellular spectrum we are typically interested in large scale interference effects caused by high power transmitters such as radar and broadcasters and in small scale effects such as jammers and ultra wideband devices. These require very specific and detailed investigations such as that offered for spectrum auctions. Similarly for fixed links, specific information is required for interference values.

Overall then we do not see the expenditure of £2 million capex and £2 million per annum opex in the way proposed as being an appropriate use of resources or cost effective and in our view it will not provide relevant business data nor help in valuing spectrum.

Question 10: We would welcome any further views on whether there are other areas of non-price information that could be published to the benefit of citizens or consumers.

No further comments.

Question 11: We would also be interested to understand from stakeholders the impact of disclosure of any of the information discussed.

As set out in our general comments above and also our response to Question 1, we believe that there could be very significant negative impacts on mobile operators and the public in the event that detailed information on point to point fixed links are disclosed.

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