



## Advertisement of a national Additional Services licence

Consultation

Publication date: 18 October 2010

Closing Date for Responses: 29 November 2010



# Contents

Section		Page
1	Executive Summary	1
2	Background	3
4	Additional services licence: duration	11
5	Additional service licence: additional payments	14
6	Additional services licence: mechanism for licence award	21

Annex		Page
1	Technical Specification	23
2	Responding to this consultation	24
3	Ofcom's consultation principles	27
4	Consultation response cover sheet	28
5	Consultation questions	30

## Section 1

# Executive Summary

- 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.
- 1.2 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.
- 1.3 There is currently one Additional Service licence. It is held by ITIS Holdings PLC 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. That licence is due to expire on 31 December 2011.
- 1.4 Ofcom is proposing to advertise a new Additional Service licence, using the same spare capacity on the Classic FM frequencies. The Broadcasting Act 1990 ("the 1990 Act") sets out what Ofcom has to do to advertise and award the proposed new licence. It provides for the licence's award to the highest cash bidder (unless it appears to Ofcom there are exceptional circumstances that make it appropriate to award the licence to a different bidder).
- 1.5 This document makes the following proposals for consultation in connection with the proposed new licence:
  - the spare capacity available for the provision of the Additional Service under the new licence should be the same as that under the current licence (section 2 and Annex 1 below);
  - the new licence should have a duration of around six years and one month (running from 1 January 2012 until sometime around the end of January 2018<sup>1</sup>), so that it expires when the Classic FM sound broadcasting service licence would expire, rather than being any shorter<sup>2</sup> (section 3 below); and
  - the Percentage of Qualifying Revenue ("PQR") payment the licensee must make annually under the licence should be set at 4% (section 4 below).

Ofcom asks seven consultation questions about these proposals and invites responses to them by 25 November 2010.
- 1.6 This document also sets out, for the benefit of stakeholders, the position on the following matters relating to the proposed new licence:

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<sup>1</sup> The precise date would depend on the precise renewal date of the Classic FM licence, which is not yet set but is likely to be in January 2011 (from which date the Classic FM licence would be renewed for seven years).

<sup>2</sup> Ofcom considers that the proposed licence may not, under the current legal framework, be longer than the period proposed. We are consulting on the proposal that the licence should not be any shorter.

- the relevant statutory framework;
- that the licence may not, under the current legal framework, be any longer than six years and one month because it is inextricably linked to the Classic FM sound service, and to the licence for that service which will expire in January 2018 at the latest (also in section 3 below); and
- the process Ofcom will follow in inviting applications for the proposed licence, considering cash bids and deciding whether and how to exercise its discretion in exceptional circumstances to award the licence to a bidder other than the highest cash bidder (section 5 below).

What we say on these matters reflects the legal position under the 1990 Act, rather than proposed exercises of Ofcom discretion on which we are consulting.

- 1.7 Our intention is that we will publish a final statement to this consultation, setting out our decisions on the matters referred to in paragraph 1.5 above, and the advertisement for the proposed new licence, in Mid-December this year or early January 2011. Our aim is that the new licence should be awarded in June 2011.

## Section 2

# Background

## Additional services licence

- 2.1 Additional Services are services which use the 'spare' capacity within the signals carrying sound broadcasting services on relevant frequencies, for example to transmit data. There is currently only one such service licensed by Ofcom. This service occupies the spare capacity within the RDS sub carrier on the frequencies used to broadcast the FM national sound broadcasting service under licence INR1 held by Classic FM Ltd.<sup>3</sup> The current Additional Services licence, which is held by ITIS Holdings PLC and is used to transmit traffic and road travel information to in-car navigation devices, is due to expire on 31 December 2011.
- 2.2 There are no statutory provisions which provide for an Additional Services licence to be renewed or extended, unlike in respect of local and national sound broadcasting service licences.
- 2.3 Consequently, to avoid there being a gap between the expiry of the current licence and the start of the proposed new licence, a new licence will need to be advertised later this year or early next. Subject to the matters set out in this document, and to consultation on some of them, Ofcom proposes that this will be a licence to use the same spare capacity on the frequencies used to broadcast Classic FM as is available under the current licence.
- 2.4 The current Additional Services licence permits the holder to broadcast data across the UK. Any arrangements between the Additional Service licensee and the Classic FM licensee, and any other transmission provider, are separate commercial arrangements between those parties, though are in part regulated by statute and licence conditions. This would not change under any new Additional Services licence.

## Status of document and impact assessment

- 2.5 Some of the matters set out in this document are matters of law in relation to which Ofcom is not exercising discretion and choosing between options open to us. These relate to:
- the maximum duration of the proposed new licence (section 3); and
  - the mechanism for awarding the proposed licence (section 5).
- 2.6 In relation to these matters, no impact assessment by Ofcom is appropriate or necessary. What Ofcom is doing is making statements about the legal position for the benefit of stakeholders or taking steps required by law, not distinguishing between options in a way that requires an impact assessment to help determine which should be chosen.
- 2.7 The purpose of other parts of this document is to consult on proposed decisions by Ofcom. These relate to:

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<sup>3</sup> 'INR' stands for Independent National Radio, and the holders of national sound broadcasting services licences are sometimes known as 'INR licensees'

- the determination of the amount of spare capacity available for the provision of the Additional Service under the proposed licence (see this section and Annex 1);
  - whether the new licence should have a shorter duration than the maximum possible in the circumstances (section 3) and
  - the level of the payment to be made by the new licence holder based on a specified Percentage of Qualifying Revenue (“PQR”) (section 4).
- 2.8 We have therefore set out in this document the factors that we have taken into account in considering the different options in those matters. We have sought to assess their likely impact and, where appropriate, we have invited views on what would constitute an appropriate approach for Ofcom to take. The parts of this document relating to those matters therefore constitute our impact assessment (under section 7 of the Communications Act).
- 2.9 We invite respondents to comment further, if they wish to do so, on the impact of our proposals when responding to this consultation so that we can take their comments into account in reaching our decisions.
- 2.10 We are required by statute to have due regard to any potential impacts our proposals in this consultation may have on race, disability and gender equality and equality in Northern Ireland – an Equality Impact Assessment (EIA) is our way of fulfilling this obligation. Ofcom has considered whether it is required to undertake a full EIA for this consultation. On the basis of our initial EIA screening we have determined that this is not required.

## Statutory framework

- 2.11 The process 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

- 2.12 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.
- 2.13 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.
- 2.14 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.
- 2.15 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.
- 2.16 Also relevant, as part of the background to the statutory scheme in which we perform our duties, is the following statement made to the House of Commons during the passage of the Bill that became the 1990 Act,<sup>4</sup> by the then Home Secretary, David Waddington MP. He said of [what became] the 1990 Act's provisions relating to the auction of licences:
- ‘..Our proposal that Channel 3, Channel 5 and certain other licences should be allocated by competitive tender has two main objectives. First, we want to establish a fairer and more objective system for awarding franchises than the present one, which has few defenders, but at the same time to ensure high standards and diversity. Secondly, we have a clear duty, which some campaigners gloss over far too quickly, to ensure that the taxpayer gets a proper return for the use of the valuable and scarce national resources constituted by broadcasting rights and, in particular, the use of the frequency spectrum.’
- 2.17 We consider that, in the present case, fulfilling Ofcom's general duty under section 3 of the 2003 Act, in particular by securing optimal use of the spectrum, and our duty to do all we can to secure that spare capacity within a relevant frequency is used for Additional Services, can be achieved, in the context of provisions that provide primarily for the award of the licence by auction to the highest cash bidder, as follows.
- 2.18 We can expect the highest bidder in a competitive auction for a licence to be the applicant who values the licence most. And, that that bidder would so value the licence on the basis it will use it to provide a service most valued by consumers. So, in general, we would consider that an award of a licence to that bidder would secure optimal use (efficient allocation) of the spectrum and to meet our general duty under

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<sup>4</sup> On 18 December 1989



section 3 (though we would also consider whether any other factors are relevant to fulfilling our duties).

- 2.19 Our proposals in this consultation document are designed to meet those duties in the context of the proposed Additional Services licence. In particular, by making available spare capacity on a relevant frequency and by encouraging applications (bids) in an auction that will lead to competition between applicants (bidders) to make the highest cash bid for the licence (though see below about what we say about the PQR and about deciding if there are exceptional circumstances that make it appropriate to award the licence to a bidder other than the highest).

## Ofcom's functions and powers

- 2.20 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.
- 2.21 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.<sup>5</sup> It provides for Ofcom to determine the spare capacity available for providing an Additional Service.
- 2.22 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.
- 2.23 Section 115 contains provisions relating to the licensing of Additional Services. For example, and relevant here, 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.
- 2.24 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.

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<sup>5</sup> Classic FM is an example of a sound broadcasting service provided on a relevant frequency

- 2.25 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 future financial position.
- 2.26 Section 117 sets out the procedure Ofcom must follow in connection with the consideration of applications for, and awarding of, Additional Services licences. It does so by saying that, subject to certain modifications, section 100 of the 1990 Act applies.
- 2.27 These sections make provision for Additional Services licences to be awarded by auction,<sup>6</sup> 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.
- 2.28 There are two thresholds. First, section 117(1)(a) says that, as far 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 be capable of being maintained throughout the period the licence would be in force.
- 2.29 We can only consider an applicant's 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 not to award the licence to the applicant submitting the highest cash bid if there are 'exceptional circumstances' which justify awarding it to a different applicant (see section 5 below).<sup>7</sup>
- 2.30 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.
- 2.31 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

<sup>6</sup> 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, a point to which we return in section 4 below.

<sup>7</sup> 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.

connected person and are referable to the right under the licence to use, or to authorise any other person to use, the spare capacity allocated by the licence.

2.32 Finally, for present purposes, 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:

- 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 proposed here; 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).

2.33 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 for reasons explained in section 3 below.

## **Relevant frequency and spare capacity**

2.34 Amongst the matters Ofcom is required to determine and specify in the advertisement for an Additional Services licence are:

- the sound broadcasting service or services on whose frequency or frequencies the services are to be provided; and
- the extent and nature of the spare capacity: the capacity within the signals carrying the sound broadcasting service on a relevant frequency and which is available for the provision of Additional Services.

2.35 These are linked to the issues of the expiry date of the existing Additional Services licence and the possibility of the continuity of a service provided under an Additional Services licence.

2.36 In considering these issues we have borne in mind in particular one of our main general duties in performing our radio licensing function: promoting the interests of consumers in relevant markets; and our duty to make optimal use of the spectrum. Likewise, our duty to relating to the use of spare capacity within relevant frequencies. Also part of the relevant background are the comments in paragraph 2.14 above about a proper return for the use of the valuable and scarce spectrum.

2.37 In light of these, we consider that:

- 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 used to broadcast the Classic FM sound broadcasting service under licence INR1;
- 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; and
- the new licence should be advertised, awarded and granted in sufficient time to allow the possibility of continuity of a service under an Additional Services licence (whether by the current licensee, were it to be awarded the new licence, or a different licensee).

2.38 It appears to us that a determination that at least the same capacity as is currently available for Additional Services on the frequencies used to broadcast Classic FM would have a positive impact consistent with the duties referred to above. The availability of that data capacity enables the current licensee, ITIS Holdings PLC, to provide a valuable service to consumers, using all the spare data capacity available to it. This is evidenced by the number of users of that service - some 2.4 million - generating profits for ITIS Holdings PLC. Further, it appears to us that a similar service may not be capable of provision using a smaller amount of data capacity (a reduction in the capacity would result in a lowering of the repetition rate, which would in turn mean a reduction in the amount and quality of data that could be transmitted), though, of course, the capacity is by no means bound to be used to provide a similar service. As a result, the availability of a smaller amount of data capacity would have a less positive impact less consistent with our principal general duty and that of securing the use of relevant spare capacity.

2.39 The first two of the bulleted points in paragraph 2.35 above are, however, subject to the following matters:

2.40 First, licence INR1 currently runs until 30 September 2011, but it is eligible for renewal under the provisions of the 1990 Act introduced recently by the Digital Economy Act 2010. Ofcom has recently published a consultation document in which it proposed that the licence would, if Classic FM Ltd takes up its right to renewal on the terms determined by Ofcom, be renewed for seven years from its renewal date (likely in January 2011) (to run until January 2018, but subject to the termination provisions now in sections 97A, 97B and 105A of the 1990 Act). The advertisement, award and grant of the proposed new Additional Services licence is subject to Classic FM Ltd taking up its right to renewal.

2.41 Second, 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 suggest that the same amount of spare capacity will be available on the relevant frequencies. That position will be confirmed before the new licence is advertised. So, the advertisement, award and grant of the new Additional Services licence is also subject to further consultation between Ofcom and Classic FM Ltd about the its use of the signals carrying its service.

- 2.42 As to the latter of the three bulleted points in 2.35 above, we note that the expiry date of the existing Additional Services licence is 31 December 2011. We believe that we should aim to commence the process of advertising the proposed new licence early enough to allow for the possibility of continuity in the provision of a service provided under an Additional Services licence (whether or not this is the same as the service provided under the current licence and whether or not the licensee is the same).
- 2.43 This, it seems to Ofcom, would be consistent with our duty to secure optimal use of the spectrum. It would lead to an advertisement date of December 2010 (or early 2011).
- 2.44 The following sections of this document address issues that need to be considered in the lead up to the advertisement of the proposed new licence:
- the duration of the new licence;
  - the level of the additional payments the licensee will pay; and
  - the mechanism for the licence award.

**Question 1:** *In conjunction with Annex 1, 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?*

## Section 3

# Additional services licence: duration

## Licence duration

- 3.1 As we indicate above, under the 1990 Act, an Additional Services licence can be granted for a period of *up to* twelve years. As we also say, we are required to state in the advertisement of a new Additional Services licence its proposed duration.
- 3.2 In addition, when applying for the licence, a bidder would need to know the duration of the licence, amongst other things, to determine its value to that bidder and therefore how much it should bid.
- 3.3 We therefore have a decision to make as to the duration of the new licence. In order to do this we need to develop an analysis of the different options. Our analysis is set out below. The proposal it leads us to is that the duration of the new Additional Services licence should be for just over six years, so that it expires at the same time as the Classic FM sound service licence INR1.

## Analysis

- 3.4 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 will be broadcast under licence INR1, should Classic FM Ltd take up its right to renewal of that licence. This relationship with the service provided under licence INR1 limits the duration for which Ofcom could license the new Additional Service.
- 3.5 The renewed licence INR1 would run for seven years from around January 2011 (subject to various termination provisions). Reading relevant provisions of the 1990 Act<sup>8</sup> in the light of the High Court's recent judgment in the case of *Data Broadcasting International Limited (1) Simpleactive Limited (2) v Office of Communications* (Ofcom),<sup>9</sup> the new Additional Services licence could only be granted for the same period (or, rather, so it ends at the same time).
- 3.6 What these provisions and this judgment make clear is that an Additional Service (and its licence) is inextricably linked to the sound service on whose frequency it is carried (and its licence). An Additional Service (and an Additional Services 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 end. Accordingly, the new Additional Service could be licensed for a maximum of around six years and one month (running from 1 January 2012 until sometime around the end of January 2018 when the renewed INR1 licence would be due to expire).<sup>10</sup>

<sup>8</sup> See sections 114(1), 114(2), 114(3) and 116(1)(b)(ii), in particular

<sup>9</sup> [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. ...."

<sup>10</sup> 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

- 3.7 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 referred to above. 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.<sup>11</sup>
- 3.8 What these provisions<sup>12</sup> mean is that, in practice, the new Additional Services licence could, in any event, run for less than six years and one month, notwithstanding that it is granted for that period. A question that remains for Ofcom is whether the new licence should in fact be granted for a shorter period. For the following reasons, we propose that it should not.
- 3.9 A relevant consideration is that, for commercial reasons, as well as regulatory certainty, a licensee is likely to want the longest possible licence term available. These reasons include the desirability of possessing a valuable asset, like a licence to use a scarce resource like capacity on the radio spectrum, for the longest possible period, to maximise return. That tends to be the assumption of the wider commercial radio industry.
- 3.10 From a regulatory perspective, we also 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. These factors might suggest that offering a licence of the sort of (maximum possible) duration referred to would help promote competition for it and secure optimal use of the spectrum, as well helping Ofcom do all we can to secure that spare capacity on a relevant frequency is used to provide Additional Services.
- 3.11 However, as a regulator we also need to take into account other factors. For example, the possibilities that technologies are evolving and/or of developments in Government policy – like digital switch-over for radio. In addition, where licences are shorter this provides more opportunities for bidders to compete for them. Each of these factors might suggest an alternative view that a shorter licence – offering the possibility of alternative use of the relevant spectrum at an earlier date could secure the optimal use of the spectrum. In other words, awarding a licence for the maximum possible period might not necessarily be consistent with our general duty.
- 3.12 So, we do not simply assume the proposed new Additional Services licence should simply be granted for the maximum duration possible in the circumstances. We have considered whether there appear to be reasons, in the present case, for awarding and granting the new licence for a shorter period.

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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.

<sup>11</sup> 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.

<sup>12</sup> and others like those referred to in the footnote immediately above.

- 3.13 One such reason could arise if there is an interest in the licence being shorter to secure greater flexibility in the use of relevant spectrum in the context of the Government's policy, and any decisions it takes, in relation to digital switchover. We take the view, however, that the provisions referred to elsewhere in this document which could have the effect of shortening the new licence's duration mean there is little need to adopt a different (shorter) licence period in the interests of flexibility in this case.
- 3.14 Further, it appears to us a fair assumption that a shorter licence period in this case – shorter even than the already relatively short maximum period possible in the circumstances - would necessarily reduce the attractiveness to bidders of the licence. That would result in fewer of them, prepared to pay less for the licence.
- 3.15 Putting all this another way, in the context of the proposed new Additional Services licence, given its relatively short maximum possible length in any event, there are reasons, consistent with our duty to secure optimal use of the spectrum, and other relevant duties, for granting the licence for its maximum possible duration in the circumstances.
- 3.16 We are, nonetheless, of course open to views as to whether the new Additional Services licence should be for a shorter period than that proposed. We invite stakeholders and other interested parties to offer any such views, including evidence as to what the ramifications would be, especially in the context of the possibility of a digital switchover for radio services and of the annual additional payments the licensee would be required to make (see Section 4).

**Question 2:** *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.*



## Section 4

# Additional service licence: additional payments

## Additional payments

- 4.1 The holder of an Additional Services licence is required, under section 118 of the 1990 Act, to make additional payments i.e. a cash bid sum (increased annually by RPI) and a payment based on a Percentage of Qualifying Revenue ("PQR") determined by Ofcom (and which may be nil). ITIS Holdings PLC, the holder of the existing Additional Services licence, is currently making additional payments comprising £600k p.a. (increased annually by RPI since 2003) in respect of its cash bid when the licence was last awarded (by auction) and 4% PQR. These payments go to HM Treasury.
- 4.2 When advertising an Additional Services licence we are required to specify what PQR will be payable in respect of the licence.

## Relationship between the PQR and the award process

- 4.3 In this section we consider how the level of the PQR in the present case could affect the level of cash bids and so the outcome of the auction process. For the purposes of our analysis we assume that firms are able to make a rational assessment about the revenues and costs (and therefore the overall profitability) of operating services using the licence. We also assume that firms set their cash bids based on this assessment and taking into account their beliefs about the likely bids made by other participants in the auction.
- 4.4 Our analysis focuses specifically on two closely related objectives which we believe to be relevant in setting the PQR in this case:
- Encouraging a competitive auction; and,
  - Complying with our statutory duties.
- 4.5 The discussion sets out the pros and cons of different levels of PQR. We provisionally conclude that, on balance, in relation to the proposed new Additional Services licence the analysis suggests a 4% PQR would be appropriate, but that we would welcome feedback from respondents on this particular point. We discuss the reasons for this provisional conclusion below.

## Analytical Framework

- 4.6 In discussing the interaction between the PQR rate and auction outcomes it is useful to distinguish between the *gross* profit and the *net* profit from holding the licence:
- Gross profit: profit after PQR payments have been subtracted; and,
  - Net profit: profit after PQR payments and the cash bid have been subtracted.

- 4.7 Abstracting from the specific annual payment structure, we assume that the *maximum* cash bid a firm would be willing to put forward is equal to the gross profit it expects to make from holding the licence i.e. the amount that – in the limit – would drive net profits to zero. In a sufficiently competitive auction we would expect firms to submit bids that are very close to this amount since a lower bid would carry a high risk of being beaten by a rival bidder. Different levels of the PQR will obviously have an impact on the level of gross profits and this in turn should have an impact on the levels of the cash bids. For instance, a higher PQR would mean a firm would earn less gross profit: the PQR payment represents a cost like any other that must be paid out of revenues. As the gross profit will affect the value of holding the licence we can expect that the cash bids will be reduced in response to the higher PQR.
- 4.8 This can be illustrated with a simple numerical example. Consider a firm that expects to earn £10 million in qualifying revenue per year from holding the licence and has a cost base of £5m before any PQR or cash payments are made. If the PQR is 0% the firm's gross profit would be £5 million and, if the auction is competitive (in the sense that there are multiple firms who all place a similar value on the licence), the firm would need to make a cash bid of close to £5 million to be sure to win the auction. If the PQR is increased to 25% the firm's gross profit falls to £2.5 million. Clearly the cash bid must fall since a bid of £5 million would make net profits negative and the firm would prefer to lose the auction. The new bid will be close to £2.5 million instead.
- 4.9 We are confident that firms participating in the auction should be able to make an assessment of the interaction between the level of the PQR and the cash bid over the duration of the licence. Any firm seeking to acquire the licence will 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 – as indicated above - the PQR payment would simply represent a cost. As the above numerical example illustrates, we might expect different levels of the PQR to be met with an adjustment to cash bids such that the revenue generated by the auction (i.e. cash bid plus additional payments) and the identity of the winner should remain unchanged. The main effect would be a shift in the *structure* of payments from cash bids to PQR payments.
- 4.10 As set out above, prospective bidders can adjust the level of their cash bid to take account of different levels of PQR. Without a particular reason, consistent with our duties, to structure the payments for the licence in a particular way, the actual level of the PQR should be irrelevant.
- 4.11 For the purposes of this discussion we take as our starting point the position that the PQR should be 0% and examine arguments for departing from this position.
- 4.12 There may be a number of reasons why the level of the PQR may do more than alter the structure of the payments and may affect the actual outcome of the award *process* here, including the identity of the winner and the revenues generated. We have identified a number of issues which are explored in more detail below:
- 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;
  - A higher level of PQR gives an advantage to firms with a low revenue/low cost business model;
  - A positive PQR offers risk-sharing with respect to revenue fluctuations, since the absolute size of payments changes automatically in response;

- A positive PQR could reduce the likelihood of the licence being awarded to a “frivolous” bidder and so could assist in the efficient allocation of the licence as part of this award process.

### Level of PQR too High

- 4.13 Because the additional payment is based on revenue rather than profit, a high PQR risks rendering the licence unprofitable since, even with a zero cash bid, anticipated net profits could be negative (even though gross profits are positive). In an extreme case no firms would enter the auction even though some firms could profitably make use of the licence. The risk of this occurring suggests PQRs should be set cautiously, particularly where there is less certainty ahead of the auction as to who might participate.

### Bias towards low-revenue business models

- 4.14 A positive PQR should in theory provide an advantage to those firms that pursue business models combining low revenues with low costs compared to those with similar levels of profitability achieved through high costs and high revenues. The absolute value of the PQR payments is larger for firms with high revenues and they will need to make a larger adjustment to their cash bid to ensure the anticipated net profits from holding the licence remain positive. This means their cash bid may fall below those of firms with low revenue business models, who will need to make smaller adjustments to their cash bid, even if the high revenue-high cost firm would have won an auction with a zero PQR.
- 4.15 This can be illustrated with a simple (and highly stylised) numerical example. Consider two bidders for a licence that only lasts for one year:
- Firm A (high revenue/costs) expects to achieve revenues of £12 million and costs of £6 million.
  - Firm B (low revenue/costs) expects to earn revenues of only £8 million but with costs of £3 million.
- 4.16 With a zero PQR the gross profit of Firm A is £6 million and for Firm B £5 million. We can expect that Firm A will win the auction, paying somewhere between £5 and £6 million depending on how certain it is of the other firm's valuation of the licence. Now imagine a PQR of 50% is imposed. This is not necessarily realistic but serves to illustrate the effect. The gross profit of Firm A is now zero (i.e. revenues of £12 million less £6m in PQR payments less £6 million in costs) whereas for Firm B it is £1 million (i.e. £8 million in revenue less £4m in PQR payments less £3 million in costs). Now Firm B can be expected to win the licence paying somewhere between (just over) zero and £1 million.
- 4.17 In practice the effect is unlikely for modest PQR rates (such as the level of PQR under the current Additional Services licence) or when firms differ less dramatically in their cost and revenue structures. Nevertheless, it suggests another reason for adopting a cautious approach to setting the PQR rate in the present case.

**Question 3:** *To what extent do respondents consider that different levels of PQR could bias the results of the auction? Please provide evidence to support your response. In particular we would welcome views on the factors set out in section 4 of this document and the extent to which different levels of PQR would affect firms' decisions as to whether to participate in the auction or not.*

### Risk sharing and the efficiency of the award process

- 4.18 Each of the factors discussed above point to the cautious setting of a PQR in the present case. They suggest a high PQR would carry the risk of deterring participation and potentially distorting the efficient allocation of the licence. There are, however, factors that could work in the opposite direction. These are concerned with risk sharing and the efficiency of the award process.

#### Risk sharing

- 4.19 A 'risk sharing' effect is one such factor. If total payments (i.e. cash bids plus PQRs) are weighted towards PQRs, the absolute size of licence payments will vary more in response to revenue fluctuations and this helps to dampen down the impact of demand shocks<sup>13</sup>.
- 4.20 If the additional payments comprised only a cash bid there is no adjustment in response to changes in market conditions and the firm will be exposed to the full effect. That is, the firm would bear the full risk of changes in expected revenue.
- 4.21 If, at the other extreme, only a PQR is payable, a halving of revenues, say, would be partially offset by a halving of licence payments. In effect the size of licence payments adjusting in response to market conditions.
- 4.22 Auction participants may value this particular aspect of a positive PQR. If a firm or its investors dislike exposure to uncertainty, they may be in a stronger position in the auction if there is a positive PQR. In this situation the positive PQR would increase the value firms place on the licence and may therefore encourage them to participate in the auction. This could promote the efficient allocation of the licence since firms that are deterred by risk may nevertheless be able to generate significant value for consumers and society, particularly if they are newer firms seeking to provide innovative services or adopt innovative business models.
- 4.23 It is very difficult to predict whether firms seeking to acquire the Additional Services licence do value this particular property of a positive PQR. The terms on which firms can access capital are likely to vary and some may value the insurance against revenue fluctuations offered by a positive PQR. We particularly welcome comments on whether the risk sharing aspect of a positive PQR would actually encourage more firms to participate in the auction.

**Question 4:** *To what extent do respondents consider that the risk sharing offered by positive PQRs is of significant value to bidders? If so, what level of PQR is required to maximise these benefits? Please provide evidence and analysis to support your response.*

### Efficiency of the Award Process

- 4.24 A second such factor is concerned with attracting only serious bidders (and deterring frivolous bidders) and thus reducing the likelihood that the licence will be awarded to a frivolous bidder.

<sup>13</sup> This effect will be greatest when a large proportion of costs are fixed, and so do not adjust in response to demand conditions.

- 4.25 No auction can guarantee that the bidder with the highest valuation will actually win but this is particularly true in the case of a single round sealed bid auction, like that under consideration, especially since firms have to make difficult judgements about the number of other potential bidders and the bids that they might place. The one shot nature of the auction ought to encourage firms to bid the full amount that they value the licence. However, given a desire to avoid “over-paying” for the licence, if a participant misjudges the number of actual bidders and bids low because it thinks there are no other bidders then it might end up losing the auction even though it did in fact have the highest valuation.
- 4.26 Furthermore, in any auction there is the possibility that human error causes procedural mistakes that render the highest bid invalid.
- 4.27 In such an environment bidders may participate in the auction who are fully aware that they do not place the highest value on the licence but who nevertheless understand that they may still win the auction if other bidders misjudge the extent of competition for the licence. From the perspective of allocating the licence efficiently as part of this award process (that is, to award it to the user that places the most value on it first time) it would be better if the likelihood of the licence being awarded to a frivolous bidder were reduced since it would only be in the event of a misallocation (in economic terms) that they would be awarded the licence. We recognise that it would still be possible to arrive at an efficient allocation with secondary trading but consider that it would be better if the licence were awarded to the firm that places the highest value on the licence first time.
- 4.28 A standard method of deterring bidders who know they do not have the highest valuation for the licence would be to set a minimum cash bid price.<sup>14</sup> However, the legal framework (sections 100 and 117 of the 1990 Act) does not allow Ofcom to set such a minimum cash bid price in the current auction. In this particular case a positive PQR could perform a similar function.<sup>15</sup> This is because a PQR guarantees that the total payments a bidder has to make are maintained even when the cash bid is at a very low level.
- 4.29 It is true that a PQR would be less effective in deterring a bidder that only intended to use the licence to generate low revenues, since the PQR payments would be correspondingly smaller. It is not therefore as effective as a minimum cash bid price would be in performing the function referred to in the preceding paragraphs. Nevertheless, in the absence of a minimum cash bid price, a PQR could still perform a useful function.
- 4.30 We do recognise that an applicant must meet certain thresholds before Ofcom can consider whether to award it the licence on the basis of its cash bid. These require, first, that the applicant’s technical plan, so far as it relates to the use of an electronic communications network, appears to Ofcom to contain proposals that are acceptable to us. They also require that the services the applicant proposes to provide under the licence would be capable of being maintained for the period the licence would be in force.

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<sup>14</sup> For spectrum auctions Ofcom typically imposes minimum bids, for example in the 400 MHz award (see para 7.33 in the Consultation [http://stakeholders.ofcom.org.uk/binaries/consultations/spectrum\\_award/spectrum.pdf](http://stakeholders.ofcom.org.uk/binaries/consultations/spectrum_award/spectrum.pdf)) and in the 2GHz awards (See para 8.82 in the consultation <http://stakeholders.ofcom.org.uk/binaries/consultations/2ghzawards/summary/2ghzawards.pdf>)

<sup>15</sup> We note that, when speaking of what became similar provisions in the 1990 Act for the auction of channel 3 television licences, Douglas Hurd told the House of Commons on 13 June 1989 that, “...the ITC will fix a percentage of net advertising or subscription revenue for each licence to form the minimum sale price. Applicants will then be required to bid a lump sum, which they will pay in addition if successful.”

- 4.31 These thresholds *might* deter the kind of frivolous bidders under consideration here. However, we still consider that the one-shot nature of the auction means that there is the potential for strategic mis-judgements on the part of bidders and that a positive PQR could be a useful additional means of making it more likely that only serious bidders apply for and are awarded the licence and that its allocation is efficient in line with Ofcom's duties.
- 4.32 We also acknowledge that the discretion Ofcom has under section 100(3) of the 1990 Act, to award the proposed licence to an applicant who has not submitted the highest bid if it appears to us that there are exceptional circumstances which make it appropriate to do so, *might* perform a similar function to that of a PQR. However, we note that it would not necessarily do so: for example, where all bidders are the kind of frivolous bidders referred to in preceding paragraphs and have made very low cash bids. A PQR could perform the sort of function described in preceding paragraphs where Ofcom's discretion under section 100(3) might not.

**Question 5:** *Do you agree that a positive PQR would deter non-serious bidders who know they do not have the highest valuation for the licence?*

#### Provisional Conclusions: Ofcom's preferred option for PQRs

- 4.33 The above analysis considered a number of issues around setting the level of the PQR to apply to the Additional Services licence. It is difficult to conclude with certainty how important each of the factors mentioned above is in the context of the Additional Services licence and therefore whether the potential risk sharing benefits, and the benefits of helping to ensure the efficiency of the award process from having a positive PQR outweigh the potential disadvantages.
- 4.34 Clearly, a PQR that is too high would risk rendering the licence unprofitable and even a modest PQR may significantly bias the auction if bidders' business models differ significantly. These factors, set in the analytical framework outlined at the start of this section, would suggest the PQR should be set cautiously here, and possibly even be zero, so as to facilitate a competitive auction through which the optimal use of the spectrum can be identified in line with Ofcom's principal general duty.
- 4.35 This leads us to our first provisional conclusion: that we should adopt a cautious approach in this case.
- 4.36 On the other hand, however, we have a clear power to set a positive PQR, and we must consider the reasons for doing so here. One of those is the possible risk sharing benefits of a PQR referred to above, along with the possibility that the licence is awarded to a frivolous bidder, which suggest there may be value in a rate that is greater than zero in this case.
- 4.37 As we say above, it is very difficult to predict whether firms seeking to acquire the Additional Services licence do value the risk sharing properties of a positive PQR, and more difficult still to identify the precise percentage figure at which they might do so. It is also difficult to assess the risk that a non-serious bidder might be awarded the licence even though it does not have the highest valuation. There is therefore an element of judgement required to determine a figure which is, in our opinion, reasonable, soundly based and consistent with our statutory duties.
- 4.38 An analysis might suggest that the higher the PQR the greater the benefit to bidders of its risk-sharing property and the wider benefit of reducing the likelihood that the

licence is awarded to a frivolous bidder, and that to derive those benefits the PQR would need to be relatively high e.g. considerably above the 4% PQR under the current licence. However, we consider that a higher PQR would be more likely to produce the kind of adverse effects described above and to be less easy, in the present context, to reconcile with our principal general duty.

- 4.39 This, in turn, would suggest a cautiously set and modest positive PQR. It is likely that there will be considerable uncertainty surrounding bidders' revenues from the licence and in this context the risk sharing properties of a positive PQR may encourage participation in the auction, even at relatively low levels of PQR rate.
- 4.40 This leads us to our second provisional conclusion: that a PQR rate of 4%, the same as that under the current Additional Services licence, would be appropriate for this auction. This, we consider, would offer the possible benefit here of risk sharing, and reducing the likelihood of an initial misallocation of the licence but without undue effect on cash bids and their function of identifying the optimal use of the spectrum, and would be consistent with our duty.
- 4.41 We welcome stakeholders' views on whether a 4% rate effectively balances the advantages and disadvantages of PQRs in this auction. We propose to revisit our provisional conclusions in the light of evidence presented to us in response to this consultation.

**Question 6:** *Do you agree with our analysis regarding the factors to take into account when setting the level of the PQR?*

**Question 7:** *Do you agree that the PQR should be set at 4%, the same level as under the current Additional Services licence? If not, please provide evidence and analysis to support your response and explain what level of PQR you think would be appropriate.*

## Section 5

# Additional services licence: mechanism for licence award

## Award mechanism

- 5.1 As we note above, the rules for awarding the Additional Services licence are set out in section 100 of the 1990 Act. Most relevant amongst them for the purposes of this section of this document are the provisions of section 100(1) and section 100(3).
- 5.2 Section 100(1) sets out what we might call the 'highest cash bidder' rule. It says:
- 'Subject to the following provisions of this section, [Ofcom] shall, after considering all the cash bids submitted by the applicants for a national licence, award the licence to the applicant who submitted the highest bid.'
- 5.3 Section 100(3), meanwhile, says:
- '[Ofcom] may disregard the requirement imposed by subsection (1) and award the licence to an applicant who has not submitted the highest bid if it appears to them that there are exceptional circumstances which make it appropriate for them to award the licence to that applicant; and where it appears to [Ofcom], in the context of the licence, that any circumstances are to be regarded as exceptional circumstances for the purposes of this subsection, those circumstances may be so regarded by them despite the fact that similar circumstances have been so regarded by them in the context of any other licence or licences.'

### Auction and highest cash bidder rule

- 5.4 What section 100, and 100(1) in particular, makes clear is that the primary mechanism by which an Additional Services licence is awarded is by auction to the highest cash bidder. That is the basic premise of section 100, and to which the subsequent provisions of section 100 are qualifications and modifications that apply in certain circumstances.
- 5.5 What is also clear, reading the whole of section 100, and in particular, sub-sections 100(1) and (3), is that, as the first stage in the award process, those who wish to obtain the licence have to submit cash bids. Sub-section (3) does not, for example, permit Ofcom to award the licence without having obtained and considered applicants' cash bids.

### Exceptional circumstances

- 5.6 We note, however, that sub-section 100(3) gives Ofcom discretion to disregard the highest cash bidder rule and award the licence to an applicant who is not the highest cash bidder where it appears to us there are exceptional circumstances that make it appropriate to do so.
- 5.7 It is not possible for us to set out in advance the circumstances that might amount to 'exceptional circumstances' in the context of the highest cash bidder rule and the award of the proposed Additional Services licence.



- 5.8 In light of the provisions referred to in this section, we propose to adopt the following process for the award of the licence.
- 5.9 In the first place, there will be an advertisement of the proposed new licence in accordance with section 116 of the 1990 Act. This will, amongst other things, invite cash bids from applicants. We will then, on receipt of applications and bids, apply the thresholds referred to elsewhere in this document.
- 5.10 If there is one bidder for the licence, and Ofcom were able to award the licence to that bidder,<sup>16</sup> or only one bidder to whom we could make the award, we would do so.
- 5.11 If, however, there is more than one eligible bidder for the licence we will consider whether there appear to us to be exceptional circumstances that make it appropriate for us to award the licence to a bidder other than the highest bidder. In doing so, we are likely to do the following:
- Publish details of the bidders and their cash bids, including their amounts;
  - Invite submissions from bidders and any other interested parties about why and how Ofcom should, or should not, exercise our discretion to award the licence to a bidder other than the highest cash bidder; and
  - Publish those submissions and invite responses.
- 5.12 In deciding whether exceptional circumstances exist which would make it appropriate for Ofcom to award the licence to a bidder who did not submit the highest cash bid, we would consider our statutory duties and all relevant evidence.
- 5.13 We consider that the above reflects the legal position under section 100 (rather than a proposed view on which Ofcom is consulting). But, this document nonetheless provides stakeholders with an opportunity to comment on the above should they wish to do so.

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<sup>16</sup> Taking into account, for example, the thresholds referred to earlier in this document, and the rules regarding the fitness and propriety of licensees, the holding of different broadcasting licences (often called the 'ownership' rules) and disqualified persons, all as referred to or set out in the 1990 Act

## Annex 1

# Technical Specification

### Available RDS capacity

- A1.1 The Additional 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)
- A1.2 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
  - 4 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.
- A1.3 No further capacity beyond this is to be made available to the Licensee.
- A1.4 The minimum deviation of the FM carrier due to the modulated RDS subcarrier shall be  $\pm 2.0$  kHz, and the maximum deviation shall be  $\pm 2.5$  kHz.

## Annex 2

# Responding to this consultation

## How to respond

- A2.1 Ofcom invites written views and comments on the issues raised in this document, to be made **by 5pm on 25 November 2010**. (Furthermore in responding to this consultation, Ofcom also seeks **expressions of interest** in applying for this Additional Service licence. These would not be binding on any would-be applicant and any responses would be kept confidential by Ofcom.)
- A2.2 Ofcom strongly prefers to receive responses using the online web form at <https://stakeholders.ofcom.org.uk/consultations/additional-services-licence/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 3), to indicate whether or not there are confidentiality issues. This response coversheet is incorporated into the online web form questionnaire.
- A2.3 For larger consultation responses - particularly those with supporting charts, tables or other data - please email [paul.boon@ofcom.org.uk](mailto:paul.boon@ofcom.org.uk) attaching your response in Microsoft Word format, together with a consultation response coversheet.
- A2.4 Responses may alternatively be posted or faxed to the address below, marked with the title of the consultation.
- Additional Services Licence consultation  
F.A.O. Paul Boon  
Senior Radio Executive  
Ofcom  
Riverside House  
2A Southwark Bridge Road  
London SE1 9HA
- Fax: 020 7981 3806
- A2.5 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.
- A2.6 It would be helpful if your response could include direct answers to the questions asked in this document, which are listed together at Annex 5. It would also help if you can explain why you hold your views and how Ofcom's proposals would impact on you.

## Further information

- A2.7 If you want to discuss the issues and questions raised in this consultation, or need advice on the appropriate form of response, please contact Paul Boon on 020 7981 3616

## Confidentiality

- A2.8 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](http://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.
- A2.9 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.
- A2.10 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/account/disclaimer/>

## Next steps

- A2.11 Either on receipt or following the closure date for this consultation, public consultation responses will be published on our website. Ofcom intends to publish a final statement, determining relevant terms that will be adopted in the Additional Services licence advertisement, in December. At, or very near, that time we intend to advertise the proposed Additional Services licence. An advertisement notice will be sent by email to those who have expressed an interest in making an application for the licence. We shall also publish the advertisement on our website and notify regular recipients of our regular Ofcom Updates giving a URL link to the advertisement.
- A2.12 The advertisement will confirm relevant terms of the Additional Services licence in accordance with section 116 of the 1990 Act. It will provide a URL link to the application form and the accompanying notes which will specify essential information related to the application process. The advertisement will specify the closing date by which completed applications should be received by Ofcom.
- A2.13 Ofcom will consider cash bids and assess applications as set out in this document and in line with relevant statutory requirements and our duties. Following due consideration Ofcom will award of the proposed licence and will publish information about our award decision in line with the requirements of section 100 of the 1990 Act.
- A2.14 The timetable will most likely look like this:

29 November 2010	Closing date for consultation responses
December/January 2010	Publication of consultation Statement
December/January 2010	Publish AS licence Advertisement
March 2011	Closing date for applications and publication of list of bidders and their cash bid sums
March 2011	Commence assessment of applications and threshold analysis

April 2011	Announce bidders remaining after threshold analysis
Mid April 2011	(If appropriate) Invite submissions regarding 'exceptional circumstances'
Early May 2011	Closing date for submissions about 'exceptional circumstances' and their publication
Late May 2011	Closing date for responses to submissions about 'exceptional circumstances'.
Mid June 2011	Conclusion of assessment of AS licence applications and internal governance
Late June 2011	Award licence to successful applicant
Late June 2011	Publication of award decision and related information

- A2.15 Please note that you can register to receive free mail Ofcom 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](http://www.ofcom.org.uk/static/subscribe/select_list.htm)

## Ofcom's consultation processes

- A2.16 Ofcom seeks to ensure that responding to a consultation is easy as possible. For more information please see our consultation principles in Annex 2.
- A2.17 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](mailto: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.
- A2.18 If you would like to discuss these issues or Ofcom's consultation processes more generally you can alternatively contact Vicki Nash, Director Scotland, who is Ofcom's consultation champion:

Vicki Nash  
Ofcom  
Sutherland House  
149 St. Vincent Street  
Glasgow G2 5NW

Tel: 0141 229 7401  
Fax: 0141 229 7433

Email [vicki.nash@ofcom.org.uk](mailto:vicki.nash@ofcom.org.uk)

## Annex 3

# Ofcom's consultation principles

A3.1 Ofcom has published the following seven principles that it will follow for each public written consultation:

## Before the consultation

A3.2 Where possible, we will hold informal talks with people and organisations before announcing a big consultation to find out whether we are thinking in the right direction. If we do not have enough time to do this, we will hold an open meeting to explain our proposals shortly after announcing the consultation.

## During the consultation

A3.3 We will be clear about who we are consulting, why, on what questions and for how long.

A3.4 We will make the consultation document as short and simple as possible with a summary of no more than two pages. We will try to make it as easy as possible to give us a written response. If the consultation is complicated, we may provide a shortened Plain English Guide for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.

A3.5 We will consult for up to 10 weeks depending on the potential impact of our proposals.

A3.6 A person within Ofcom will be in charge of making sure we follow our own guidelines and reach out to the largest number of people and organisations interested in the outcome of our decisions. Ofcom's 'Consultation Champion' will also be the main person to contact with views on the way we run our consultations.

A3.7 If we are not able to follow one of these principles, we will explain why.

## After the consultation

A3.8 We think it is important for everyone interested in an issue to see the views of others during a consultation. We would usually publish all the responses we have received on our website. In our statement, we will give reasons for our decisions and will give an account of how the views of those concerned helped shape those decisions.

## Annex 4

# Consultation response cover sheet

- A4.1 In the interests of transparency and good regulatory practice, we will publish all consultation responses in full on our website, [www.ofcom.org.uk](http://www.ofcom.org.uk).
- A4.2 We have produced a coversheet for responses (see below) and would be very grateful if you could send one with your response (this is incorporated into the online web form if you respond in this way). This will speed up our processing of responses, and help to maintain confidentiality where appropriate.
- A4.3 The quality of consultation can be enhanced by publishing responses before the consultation period closes. In particular, this can help those individuals and organisations with limited resources or familiarity with the issues to respond in a more informed way. Therefore Ofcom would encourage respondents to complete their coversheet in a way that allows Ofcom to publish their responses upon receipt, rather than waiting until the consultation period has ended.
- A4.4 We strongly prefer to receive responses via the online web form which incorporates the coversheet. If you are responding via email, post or fax you can download an electronic copy of this coversheet in Word or RTF format from the 'Consultations' section of our website at [www.ofcom.org.uk/consult/](http://www.ofcom.org.uk/consult/).
- A4.5 Please put any parts of your response you consider should be kept confidential in a separate annex to your response and include your reasons why this part of your response should not be published. This can include information such as your personal background and experience. If you want your name, address, other contact details, or job title to remain confidential, please provide them in your cover sheet only, so that we don't have to edit your response.

## Cover sheet for response to an Ofcom consultation

### BASIC DETAILS

Consultation title: Re-advertisement of the national Additional Services licence

To (Ofcom contact): Paul Boon

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 5

# Consultation questions

### The seven questions in this consultation:

**Question 1:** *In conjunction with Annex 1, 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?*

**Question 2:** *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.*

**Question 3:** *To what extent do respondents consider that different levels of PQR could bias the results of the auction? Please provide evidence to support your response. In particular we would welcome views on the factors set out in section 4 of this document and the extent to which different levels of PQR would affect firms' decisions as to whether to participate in the auction or not.*

**Question 4:** *To what extent do respondents consider that the risk sharing offered by positive PQRs is of significant value to bidders? If so, what level of PQR is required to maximise these benefits? Please provide evidence and analysis to support your response.*

**Question 5:** *Do you agree that a positive PQR would deter non-serious bidders who know they do not have the highest valuation for the licence?*

**Question 6:** *Do you agree with our analysis regarding the factors to take into account when setting the level of the PQR?*

**Question 7:** *Do you agree that the PQR should be set at 4%, the same level as under the current Additional Services licence? If not, please provide evidence and analysis to support your response and explain what level of PQR you think would be appropriate.*