BT Response to the Ofcom consultation on:

Future pricing of spectrum used for terrestrial broadcasting

(Issued by Ofcom on 27 July 2006)

BT would welcome any comments on its position as laid out in this document, which will also be available electronically at http://www.btplc.com/responses.

Comments should be addressed to Tony Reeder at tony.reeder@bt.com

Future pricing of spectrum used for terrestrial broadcasting

Executive Summary

In the interests of the efficient use of spectrum we believe that to the extent that AIP has been applied to other WT Act licensed spectrum then AIP should also be applied to spectrum used by broadcasters.

A consistent approach to the determination of AIP charges is needed across all spectrum bands and all types of broadcaster if the correct incentives are to be sent to users.

However, BT believes that trading and liberalisation are more efficient mechanisms for the management of spectrum and that AIP should be a secondary tool used only to correct for market inefficiencies.

To be consistent with its introduction on DTT multiplexes, AIP should not be introduced on DAB multiplexes until 2014.

Introduction

BT welcomes the opportunity to comment on 'Future pricing of spectrum used for terrestrial broadcasting' (the 'Consultation'). As the Consultation notes there is a substantial quantity of spectrum allocated to broadcasting which we agree needs to be managed in an efficient manner.

BT is involved in two broadcast related activities which will potentially be impacted by a policy to apply AIP to broadcast spectrum:-

Firstly, in the summer of 2006 BT launched its Movio mobile TV service. This service enables subscribers with suitably enabled handsets to receive TV pictures broadcast over a DAB multiplex. These TV services are provided as data on the D1 multiplex. Any AIP charged to DAB multiplex will appear as a cost to Movio.

Secondly, later this year BT TV will also launch a TV service which will be delivered over a broadband connection. This service will sit alongside cable, satellite and Freeview TV from which consumers will be able to choose. Creating a level playing field between the alternative delivery options is required if distortions to the market are to be avoid.

General Comments on AIP

In an efficient spectrum market users would be able to acquire and sell spectrum by trading. The market price of the spectrum would provide the correct economic incentive to enter or exit a market. An inefficient user of spectrum would therefore face an incentive to sell the spectrum based on the market value of the spectrum. We believe that an efficient market and so a 'good market price' would be the best incentive to manage spectrum efficiently.

We were therefore slightly disappointed to read in Section 1.12 of the Consultation that Ofcom regards trading as complementary to spectrum pricing. The implementation of AIP requires regulatory intervention in a market, which Ofcom has indicated on numerous occasions that it wishes to avoid. Any errors in setting AIP could lead to incorrect signals being sent to users thereby creating distortions in the market. We envisage a spectrum market where trading is the primary mechanism for managing the spectrum and AIP is a secondary correction factor for other inefficiencies that may arise. We would welcome efforts by Ofcom to minimise the imperfections (lack of information or experience) of a spectrum market identified in the Consultation.

The decision to allocate spectrum to broadcasting is a public policy issue rather than a spectrum management issue. Allocation of spectrum to broadcasting creates a potential inefficiency in the use of spectrum as its use is limited to broadcasting with no possibility of trading. Combined with an award process which is often based on comparative selection that allocates spectrum at little or no cost (rather than auction in which its full value is realised) results in little incentive for a broadcaster to use the spectrum efficiently. The absence of any driver to relinquish spectrum will only further add to potential inefficient usage.

We also note that in principle it would be possible under trading and liberalisation for a user to acquire some spectrum under WT Act with a view to using it for broadcasting. As this user would likely have to pay AIP they would be at a disadvantage to other broadcasters. The application of AIP to broadcast spectrum would therefore remove this distortion.

As the purpose of AIP is to help mange the spectrum more efficiently we believe that to the extent that AIP is applied to other spectrum licensed under WT Act it should be applied to broadcast spectrum. Clearly this policy will lead to more efficient use of underlying spectrum, possibly at the expense of promoting other public policy objectives. But spectrum is the scarce resource which needs to be managed efficiently.

Finally, we would note that the application of AIP to broadcast users will perhaps not always work as effectively as other types of WT licences. Broadcast licenses are often for a multiplex used by several users. As a result the spectrum freed by a user can not be returned to the spectrum pool unless all the users vacate the multiplex.

Answers to consultation questions

Question 1: Do you agree with Ofcom's conclusion that AIP should, in principle, be applied to all terrestrial broadcasting uses of spectrum, as other spectrum uses? Please set out the reasons for your views, and any evidence or analysis that you can provide in support of your position.

In the interests of efficient spectrum management then to the extent that Ofcom imposes AIP on WT Act licence holders we believe that AIP should, in principle, be applied to all broadcasting users. We believe that AIP applied to broadcasting will also level the playing field between WT licence holders who may provide broadcast services and broadcasters who may hold licences under broadcast acts.

If the purpose of AIP is to ensure that the spectrum is managed efficiently we are slightly surprised that Ofcom will not apply it to FM WT Act licenses in the same manner that it is applied to other broadcast users. The proposed charging system is a population based method which is a proxy for AIP which is not based on the same charging principles (opportunity costs) that are applied to other users. This difference may create some distortions. The Consultation indicates that a similar population based charging principle will likely be applied to DAB. Again, we would argue that the same charging principles should be applied across spectrum users.

Question 2: Do you agree with Ofcom's proposals for the timing of introduction of AIP on spectrum used for terrestrial broadcasting? Please set out the reasons for your view, and any evidence or analysis that you can provide in support of your position.

The proposed timetable seems reasonable and as most charges will not arise until 2012 it would give ample notice of the changes. However, there does appear to be an inconsistency between the introduction dates of AIP for different applications. In particular, Ofcom proposes to introduce AIP in 2014 on DTT multiplexes after the expiry of the later licences, yet in the case of DAB multiplexes Ofcom is proposing to introduce AIP in 2012 after the expiry of the earlier licences. This would appear to be an inconsistent approach between DAB and DTT Multiplexes. As some DAB licenses expire in 2013 then to have a consistent approach with DTT, AIP should not be introduced until after the expiry of these later DAB multiplex licences which would be not before 2014.

Ofcom state that they would like to introduce AIP in DAB band sooner rather than later due to the additional demand for DAB capacity to carry non-sound broadcast services. It is not clear to BT why any other use of the multiplex should require the introduction AIP at an earlier date.

Clearly the size of the AIP may impact some users more than others. We welcome Ofcom's indication of the expected charges and suggest that closer to the time of their introduction Ofcom provides updates so as to allow more vulnerable users time to adjust.