

Diana Kennedy,
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Dear Diana,

On behalf of Turner Broadcasting, I would like to respond to Ofcom's consultation on the proposed introduction of AIP for terrestrial spectrum use.

Turner Broadcasting believes that through the sensible introduction of spectrum pricing Ofcom can potentially provide a framework that will underpin the development of an innovative and efficient market for the exploitation of terrestrial spectrum. In particular, we believe that the introduction of a genuine market mechanism for spectrum will benefit both consumers and society more generally. We also support Ofcom's proposed use of opportunity cost pricing.

We are, however, concerned that Ofcom states that a delayed introduction of pricing would create regulatory certainty. We believe that the contrary is the case. As Ofcom cannot credibly commit today to bind the decisions of a future regulator (or Government), the delay until 2014 makes it difficult for potential investors to assess the regulatory climate. The proposal to introduce pricing for new services immediately, yet protect incumbents from pricing until at least 2014, creates an additional barrier to new investment and innovation. Ofcom will be familiar with US studies on the welfare loss that can be attributed to regulatory decisions that delay the introduction of new services (see in particular, Hausman, J. (1997). "Valuing the Effect of Regulation on New Services in Telecommunications." Brookings Papers on Economic Activity: Microeconomics, 1-38. Available also at http://econ-www.mit.edu/faculty/download_pdf.php?id=470). The societal costs of delaying the introduction of attractive new services can be significant. Hausman estimates that, for the US, delays in the introduction of new services have result of welfare losses of many billions of dollars per year. Ofcom should at least estimate the scale of welfare losses from likely delays in the release of spectrum before concluding that any benefits of delaying the introduction of pricing outweigh these welfare losses. It may be that Ofcom has undertaken such an exercise and if so we would welcome the opportunity to review the findings.

An additional concern is that the market that develops in the period until charging is introduced for all players will be skewed in favour of the incumbents who will be able to launch services on their existing capacity, which may be in direct competition with services provided by new entrants who, by definition, will face a higher marginal cost for using spectrum. The differentiated approach, will also serve to skew the investment of decisions of potential entrants, making DTT services less attractive than other platforms. By raising the relative marginal cost of spectrum to new entrants, Ofcom would miss a valuable opportunity to increase the level of competition between platforms.

We believe that incentives created by pricing, primarily encouraging incumbent broadcasters to release spectrum, will increase the potential for new investment, competition and innovation in the market for terrestrial services, to the benefit of consumers. As the availability of attractive services provides consumers with increased incentives to switch to digital TV, the introduction of pricing would also aid the pursuit of wider policy objectives in the context of digital switch-over. It is interesting to contrast Ofcom's dedication to the creation of conditions for entry in the telecommunications market with Ofcom's apparent preference for supporting the incumbents, at the expense of competitive entry, in the broadcasting markets. Ofcom will be familiar with evidence from the telecommunications industry that competition provides a greater framework for new investment and innovation that does protectionism. Yet's Ofcom's proposed approach to spectrum pricing would seem to achieve little by way of supporting the necessary conditions for competition.

Turner fully understands the concerns of the PSBs about the potential impact of spectrum pricing on their budgets for delivering public service programming in the future. However, we strongly disagree with the claim of the PSBs that facing a charge would be inefficient, given that the alleged transactions costs inherent in operating a public subsidy. Whilst it is true that managing a public subsidy does incur transactions costs, we believe that these inefficiencies should be weighed against the efficiency gains from being potentially able to place a transparent value on the use of terrestrial spectrum for the provision of public service broadcasting using DTT. We support Ofcom's view that the PSBs should also face incentive pricing.

We welcome Ofcom's explicit recognition of the need to ensure compliance with EU rules governing the use of State Aid. In this context, the introduction of spectrum charging offers a valuable opportunity to revisit how the provision of public service TV is valued and financed in the UK. Where a PSB believes that there is a public value in its use of a channel of spectrum then they should be required to defend that value and bid for direct public support in a framework managed between the Treasury and Ofcom. The requirement that a value should be put on the public benefit derived from the use of the spectrum resource ensures both compliance with State Aid rules and that the underlying spectrum is put to its most socially valuable use. Where the public value is lower than the commercial value of the spectrum then the relevant spectrum should be made available for commercial exploitation, whether or not that spectrum is reserved for broadcasting. For the auctioning of released spectrum, this approach would enable public service broadcasters to receive direct public support for their bids in an open and transparent market. Where, for example, the public value attached to new high definition services is deemed to be greater than the commercial value of the same spectrum then the PSBs will surely secure the necessary spectrum with the use of direct support. A system of direct support is transparent, ensures a level playing field for spectrum and would constrain the ability of the PSBs to subsidise their spectrum bids from their programming budgets. From a legal perspective it would ensure that the PSBs were not being over-funded for their provision of public services.

Yours sincerely,

Campbell Cowie