



# Radio Restricted Services and 55 to 68 MHz

Policy Statement

Statement

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## Section 1

# Executive summary

- 1.1 This statement sets out our new policies in relation to radio restricted services (including Audio Distribution Systems) and unused spectrum between 55 and 68 MHz in light of the responses received to our recent consultation on *Radio Restricted Services and 55 to 68 MHz*.
- 1.2 The statement is divided into three sections: Radio Restricted Service Licences (RSLs), Audio Distribution Systems (ADS), and unused spectrum between 55 and 68 MHz.

## Radio Restricted Service Licences (RSLs)

- 1.3 The responses to the consultation showed support for our proposals to liberalise the restrictions on the issuing of short-term 28-day RSLs (S-RSLs). Therefore we will remove the restrictions relating to areas where Ofcom is advertising a commercial radio licence and replace the current rules with a single rule prohibiting S-RSLs within the coverage area of any new analogue commercial or community radio service from one month prior to the launch to three months after the launch of the service in question.
- 1.4 When Ofcom receives a large number of competing S-RSL applications at the same time for the same purpose, dates and location, we will continue to draw lots to decide between them. This proposal was supported by more respondents than any of the other options and it provides a swift, easy to administer, non-subjective decision-making process.
- 1.5 We will extend the availability of short-term, event-based, non-consecutive S-RSLs on AM. These are currently restricted to sports events only, but in future will be available for non-sports events too.
- 1.6 In respect of long-term (five-year) establishment-based RSLs (L-RSLs), in future we will allow commercial establishments to hold L-RSLs on the same basis as non-commercial establishments.
- 1.7 We will introduce some flexibility in the licence term and grant L-RSLs for between one year and five years in length. (This term will be measured in six-monthly increments.)
- 1.8 Where the standard power level permitted does not allow for adequate coverage of the licensed establishment site, we will, on a case-by-case basis, consider licensing L-RSL services at a higher transmission power level. This would be to ensure coverage of a specific site only, and not to allow for overspill.
- 1.9 It should be noted that new Notes of Guidance for RSLs encompassing these changes are being published at the same time as this statement at <http://www.ofcom.org.uk/radio/ifi/rbl/rsls/rslapps/notes.pdf>.

## **Audio Distribution Systems (ADS)**

- 1.10 We will introduce a permanent licensing scheme for ADS at the end of the current trial. The scheme will remove the existing restrictions regarding the content of these services, while making them subject to Broadcasting Act (BA) legislation.
- 1.11 We will maintain the technical specifications for such services established for the purposes of the trial.
- 1.12 We will allow longer-term (up to one-year) and/or site-based ADS services to be licensed, where circumstances permit.
- 1.13 We will in principle grant BA licences for ADS which intend to use spectrum other than 60.75 to 62.75 MHz, should the operator in question have secured access to suitable spectrum.
- 1.14 We will amend the standard terms of sound link service licences in order to extend the purpose of this type of Wireless Telegraphy Act (WTA) licence (which is currently used for PMSE) to include ADS. The use of spectrum for ADS services will continue to be charged on the same basis as that for PMSE. The issuing of WTA licences for ADS will continue to be contracted-out to JFMG.
- 1.15 We will issue five-year radio restricted service licences under the Broadcasting Act legislation that will permit rather than oblige ADS services to be broadcast via wireless telegraphy. An ADS operator will need independently to secure access to spectrum in order to make use of this type of radio restricted service licence. Each operator will need to hold only a single BA licence, regardless of the number of ADS services he or she is providing, on the understanding that it will be incumbent upon the licensee to inform Ofcom of any change(s) to the number and nature of ADS services being provided under the licence. BA licences are charged on a cost recovery basis and the fee for a BA licence for ADS will be announced before the launch of the permanent scheme in the summer.

## **Unused spectrum between 55 and 68 MHz**

- 1.16 Ofcom will consider any request for use of the currently unused spectrum between 55 and 68 MHz on a case-by-case basis. It should be understood that there will be no guarantee regarding the length of time for which this spectrum will be available on this basis and that Ofcom reserves the right to change the use of this spectrum with no more than one year's notice to any existing users. Requests from either PMSE or ADS providers (once the new ADS licensing scheme is in place) for use of the currently unused spectrum between 55 and 68 MHz will need to be directed to JFMG, all requests for other types of spectrum use should come to Ofcom directly.

## Section 2

# Introduction

- 2.1 In the consultation on *Radio Restricted Services and 55 to 68 MHz*, published on 26 April 2006 ([www.ofcom.org.uk/consult/condocs/cads\\_scheme/consultation.pdf](http://www.ofcom.org.uk/consult/condocs/cads_scheme/consultation.pdf)), Ofcom addressed three distinct matters:
- it reviewed the administration of radio restricted service licences (RSLs) and proposed some options to decrease the regulatory burden faced by RSL operators, where appropriate;
  - it proposed to introduce a permanent scheme for Audio Distribution System (ADS) services; and
  - it sought views on the potential release of up to 8 MHz of unused spectrum in the 55 to 68 MHz band.

## Radio restricted services

- 2.2 RSLs are either temporary (usually for up to 28 days) broadcast licences issued to radio stations serving a relatively small geographic area (S-RSLs), or longer term (five-year) broadcast licences issued to radio stations serving a single, site-based, establishment, for example a hospital or a university (L-RSLs).
- 2.3 Prior to the consultation the licensing of radio restricted services was an area of radio licensing which had not been reviewed since the establishment of Ofcom. Ofcom's review of the administration of RSLs found that operators of these services faced more of a regulatory burden than necessary and had less than the optimum level of flexibility. Therefore, Ofcom made proposals designed to liberalise and, where possible, streamline the issuing of RSLs.

## Audio Distribution Systems

- 2.4 ADS are very short-range services (for use within a particular venue). They are usually provided on a commercial basis (the mobile receivers are sold to users) to enable spectators at a particular sports event to listen in to the referees' commentary, or to hear a relay of content which is already subject to the provisions of a Broadcasting Act licence. However, there are alternative uses, such as translations of a conference presentation.
- 2.5 Since June 2004 Ofcom has been running a trial for ADS with restricted coverage using spectrum not specifically assigned for broadcasting<sup>1</sup>. This trial is due to close at the end of June 2007, and the consultation considered whether, and if so how best, to implement a permanent scheme for this type of service.

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<sup>1</sup> Prior to the Communications Act 2003 coming into force broadcasting licences for television or radio services could only be issued in relation to spectrum assigned to the regulator (formerly the Independent Television Commission and the Radio Authority) for this purpose by the Secretary of State.

- 2.6 The experimental licensing scheme was established, following an earlier consultation, in February 2004<sup>2</sup>, because Ofcom felt that the development of choice, and the opportunity for enabling a range of valuable uses of the spectrum resource, was being unduly inhibited by the requirements of the current licensing arrangements. Notwithstanding the introduction of in-stadia S-RSLs<sup>3</sup>, which were an early attempt to cater to the growing demand for a more flexible approach to the use of spectrum for restricted broadcast services, it was recognised that the limited amount of spectrum available within the sound broadcasting bands – VHF band II (FM) or medium wave (AM) – which were and still are under tremendous pressure from the demand for “traditional” radio broadcasting services, restricted the scope for using these frequencies for other purposes, and that the introduction of ADS would enable the provision of multiple short-range services in most areas. In addition, it was noted that encouraging wider access to spectrum that was hitherto restricted to a narrow range of uses reflected one of Ofcom’s core spectrum management objectives, as set out in our Spectrum Framework Review – to reduce or remove unnecessary restrictions and constraints on spectrum use.
- 2.7 For the purposes of the current trial, ADS are licensed for multiples of five days. There is no restriction (other than frequency availability) on how many consecutive licences any individual or company may hold. They are licensed to use spectrum between 60.75 to 62.75 MHz on a secondary, non-interference basis to Programme Making and Special Events (PMSE) users. ADS are not permitted to provide self-generated content or commercial messages.
- 2.8 The trial has shown that there is a demand for ADS. Between June 2004 and March 2006 142 licences were issued (an average of four or five a month). Given the need to invest in non-standard tuners in order to receive these services, this represents a significant demand which could not be met by existing restricted service licensing arrangements because of a lack of available spectrum in the ‘traditional’ radio broadcasting sub-bands. Moreover, since the publication of the consultation the demand for ADS licences has increased. The average number of ADS licences issued each month between April and September 2006 was twelve, and this could well increase further with the availability of ADS, which would be able to carry self-generated content, on a permanent rather than trial basis.
- 2.9 In light of this demand and the fact that the trial has also shown that ADS and PMSE spectrum usage can co-exist (and thereby better reflect our general duty under the Communications Act to secure “the optimal use for wireless telegraphy of the electromagnetic spectrum”<sup>4</sup>) we proposed to introduce a more permanent arrangement for ADS.
- 2.10 During the trial, ADS services have operated on a provisional basis, licensed under the Wireless Telegraphy Act (WTA) alone. Ofcom has not required those providing ADS services to hold a licence under the Broadcasting Act 1990 (as amended). There were a number of reasons for adopting this provisional approach, most notably that:
- the services do not operate in traditional broadcasting spectrum and could not be received using conventional radio or television broadcast receivers; and

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<sup>2</sup> Details of the ADS trial consultation can be found at [http://www.ofcom.org.uk/consult/condocs/special\\_events/](http://www.ofcom.org.uk/consult/condocs/special_events/)

<sup>3</sup> Extremely low-powered FM licences that allow a very short-range service to be broadcast within a stadium for a usual maximum of 28 days.

<sup>4</sup> Section 3 (2) (a) of the Communications Act 2003

- it is not permitted for the services to transmit content specially developed to be used for the purpose of the ADS transmission. This includes event commentary and analysis, and commercial messages.
- 2.11 However, having had the opportunity to conduct a detailed review of ADS, Ofcom concluded that under broadcasting legislation, ADS services do fall within the category of restricted services as defined in section 245 of the Communications Act 2003 and that therefore it is a criminal offence under section 97 of the Broadcasting Act 1990 to provide such a service without the appropriate licence.
- 2.12 There is provision in the legislation for the Secretary of State to make an order in effect making the provision of specific services or types of service exempt from the requirement that it should be covered by the appropriate broadcasting licence. However, given the commercial nature of the majority of these services we do not believe it would be appropriate to seek an exemption. In addition, the Department of Culture, Media and Sport (DCMS) has expressed to Ofcom the view that it was unlikely to support an exemption in this case. Moreover, we also proposed enabling these services to carry self-generated content including commercial messages, a move which would make the content of ADS virtually indistinguishable from that of some other RSLs.

### **Spectrum in the 55 to 68 MHz band**

- 2.13 There is spectrum in the 55 to 68 MHz band that is very little used. Specifically, this includes two blocks of 4 MHz, one above and one below the current allocation for mixed PMSE and ADS use (60.75 to 62.75 MHz) mentioned above.
- 2.14 Spectrum is generally in short supply, and in many frequency ranges there is a large imbalance of supply and demand. It is therefore important to consider whether there is demand to bring this unused spectrum into use, and if so how this might be done.
- 2.15 In the consultation Ofcom noted that there are a number of potential uses for this frequency range, notably: ADS, private business radio applications and PMSE.
- 2.16 Having noted these potential uses we asked an open question designed to elicit views from respondents on a number of matters including:
- alternative uses for these unused frequencies;
  - the level of interest in accessing these frequencies; and
  - whether we should make the spectrum available for licensed use, and if so on what basis.

### **Consultation questions**

- 2.17 The consultation document posed fifteen specific questions centred around these proposals, as follows:

*Question 1) Do you agree with the proposal to liberalise the restrictions on the issuing of S-RSLs in all areas where a new commercial service is advertised, or where a new commercial or community service is due to be, or has recently been, launched? If you do not agree with this proposal, please set out your preferred alternative explaining why you believe it would be a more appropriate option.*

- Question 2) *What is the most appropriate way for Ofcom to decide between competing short-term RSL applications for broadcasts to cover the same event in the same area at the same time?*
- Question 3) *Do you have any comments on other areas of S-RSL policy, as set out in the 'Notes for Applicants', that you would like to bring to our attention?*
- Question 4) *Do you agree with the proposal to allow commercial establishments to apply for L-RSL licences?*
- Question 5) *Do you agree with the proposal to offer L-RSLs for one-year as well as five-year periods?*
- Question 6) *Do you have any comments on other areas of L-RSL policy, as set out in the 'Notes for Applicants', that you would like to bring to our attention?*
- Question 7) *Do you agree that we should license 'ADS-RSLs' once the ADS trial ends on 31 August 2006?*
- Question 8) *Do you agree with the technical characteristics of the licence? If not, what alternative proposals do you have in mind?*
- Question 9) *Do you agree with our conclusions on the potential interference issues concerning shared programme-making use of the spectrum? If you disagree, please give reasons.*
- Question 10) *Do the current arrangements ensure that programme-making use of the sub-band at "known" events is adequately safeguarded?*
- Question 11) *If circumstances permit, should 'ADS-RSLs' be available for longer than five days, and if so what is/are the appropriate licence duration(s)?*
- Question 12) *If circumstances permit, should the link between an "event" and an 'ADS-RSL' be removed to permit general "site" based licences?*
- Question 13) *Do you agree that the availability of 'ADS-RSL' licences should be extended to 'non broadcast' frequency bands other than 60.75 to 62.75 MHz?*
- Question 14) *Do you have any comments regarding the costs and administration of 'ADS-RSLs'?*
- Question 15) *Do you foresee interest in accessing up to 8MHz of frequencies in the 55 to 68 MHz band that are presently almost unused, and if so for what types of service and/or technology? Do you have any views on how Ofcom might release this spectrum to the market for use?*

2.18 We received 30 responses to the consultation, of which 15 addressed some or all of the proposals relating to RSLs, 18 addressed some or all of the questions relating to ADS and 13 considered the unused spectrum between 55 and 68 MHz. 26 of the responses are either entirely non-confidential or have had the name and address of

the respondent withheld but are otherwise non-confidential. These can be viewed at:  
[http://www.ofcom.org.uk/consult/condocs/rrs\\_5568/responses/](http://www.ofcom.org.uk/consult/condocs/rrs_5568/responses/)

- 2.19 This statement summarises the responses to specific questions posed in the radio restricted services (RRS) consultation and sets out Ofcom's policy conclusions.

## Section 3

# RSLs: Summary of responses with policy conclusions

## Liberalising the restrictions on S-RSLs where a new commercial or community service is being launched

- 3.1 Currently we have several rules restricting the issue of S-RSLs where we are advertising a new local commercial radio licence, and preventing the licensing of S-RSLs in areas where new local commercial or community radio services are due to be, or have recently been, launched.
- 3.2 We proposed replacing the current rules with a single rule so that:
- no S-RSLs will normally be licensed within the coverage area of any new commercial or community radio service from one month prior to the launch to three months after the launch of the service in question.

*Question 1) Do you agree with the proposal to liberalise the restrictions on the issuing of S-RSLs in all areas where a new commercial service is advertised, or where a new commercial or community service is due to be, or has recently been, launched? If you do not agree with this proposal, please set out your preferred alternative explaining why you believe it would be a more appropriate option.*

- 3.3 Fourteen respondents supported our proposal to liberalise the restrictions on the issuing of S-RSLs in all areas where a new commercial licence was being advertised, or a new commercial or community service was due to be, or had been launched.
- 3.4 No one rejected the proposal, although the **Ofcom Advisory Committee for Scotland (ACS)** asked if ‘fragile’ new community radio services could be allowed to appeal for a longer protection period, and **BR-FM**, a community radio licensee, argued for a prohibition on S-RSL activity during a period starting two months prior to a new station’s launch and ending four months after the launch (rather than a period starting one month prior to launch and ending three months afterwards as we proposed in the consultation). In this context, we note that S-RSLs offer only temporary competition to existing services, and that they must offer content that is distinct from any other non-BBC radio station in the area. In light of this we believe that offering additional protection for specific community radio services would be an unnecessary intervention which would undermine the simplified de-regulatory approach that has been supported by almost all of those who responded to this proposal.

## Policy conclusion

- 3.5 Given the support for the proposal to liberalise the restrictions on the issuing of S-RSLs, we will:
- remove the restrictions in areas where Ofcom is advertising a new local analogue commercial radio licence; and

- replace current rules with a single rule prohibiting S-RSLs within the coverage area of any new commercial or community radio service from one month prior to the launch to three months after the launch of the service in question.

### Multiple S-RSL applications for the same event at the same time

- 3.6 S-RSLs are usually awarded on a 'first come, first served' basis. In addition, if a licence is for coverage of an organised event, the event organiser is required to give their permission for the broadcast. However, sometimes we receive a large number of applications at the same time, for the same purpose, broadcast dates and licence area. Moreover, these 'multiple applications' are often not tied to an organised event and thereby distinguishable through having been given an event organiser's approval. Typically, these applications will be for events in the religious calendar, such as the observance of Ramadan or the celebration of Diwali.
- 3.7 Generally, our policy is to license only one station for a particular event in any one area<sup>5</sup>. Therefore, when we receive a number of applications for the same area, event and dates, we must decide between them. Currently, if an applicant's proposals conform to the licensing requirements as set out in the Notes for Applicants, we decide between groups by means of a draw. However, we used the consultation to ascertain whether there might be a better way to manage this process. First we set out a number of options (drawing lots, 'beauty parade', highest bidder and inviting other agencies to participate) indicating the flaws and benefits associated with them. Then we invited respondents to outline what they believed to be the most appropriate means of deciding between multiple applications bearing in mind our preference for avoiding the need to impose a more difficult or detailed application procedure on the types of S-RSL for which we receive multiple applications than is normally required for any other S-RSL.

Question 2) *What is the most appropriate way for Ofcom to decide between competing short-term RSL applications for broadcasts to cover the same event in the same area at the same time?*

- 3.8 Six of the thirteen responses to the question about the most appropriate way to decide between multiple applicants for the same event, in the same area, at the same time, supported the option to draw lots although two of these noted that they would also be happy for a 'first come, first served' system to be used (an option which was also supported by one other respondent). Four people supported a 'beauty parade' process, one of whom suggested this should be combined with external advice and another felt that the beauty parade process should include face-to-face interviews. One person suggested a mix of all three options. No-one supported highest bidder auctions for competing RSL licence applicants.
- 3.9 'First come; first served' is the general policy for RSL licensing however, it is not practical when multiple applications are received on the same day as happens for major events, notably Ramadan. With respect to licensing via a 'beauty parade' process, we do not believe that it would be sensible to introduce a more costly,

<sup>5</sup> We have considered whether we could license more than one service for the same purpose in an area, but typically where we receive lots of applications we have few suitable frequencies available (e.g. West Yorkshire, the North West and Greater London). In addition, there continues to be demand for S-RSLs in the same area for entirely different purposes, and we believe it would be unfair to limit or prevent these from going ahead by licensing more than one service for the same purpose in the same place.

lengthy and potentially subjective decision-making process for simple temporary licences and this option did not attract wide support.

## Policy conclusion

- 3.10 Given that no better alternative solution was suggested we will continue to draw lots where there are competing short-term RSL (S-RSL) applications for the same event, in the same area at the same time. We note that this proposal was supported by more respondents than any of the other options and that it provides a swift, easy to administer, non-subjective decision-making process<sup>6</sup>.

## Comments and suggestions regarding existing S-RSL policy

- 3.11 Having considered the two specific issues outlined above, we also asked for any further suggestions or comments regarding our existing S-RSL policy.

*Question 3) Do you have any comments on other areas of S-RSL policy, as set out in the 'Notes for Applicants', that you would like to bring to our attention?*

## Policy suggestions and conclusions

- 3.12 There were several suggestions regarding current S-RSL policy:
- 3.13 One respondent suggested that we stop licensing RSLs for trial services where a community or commercial radio licence has already been awarded. Given that we have recently announced that, with the possible exception of up to two new licences in north and mid-Wales, we have no plans to advertise any new local commercial radio licences for the time being, we do not expect henceforth to license any restricted services as 'trials' for future analogue commercial radio licence applications, other than in north and mid-Wales. However, as we are continuing to invite applications for community radio licences, and any restricted service would be required to broaden choice for listeners, we do not consider that it would be appropriate to constrain the issue of RSLs in the manner suggested. Therefore, Ofcom will continue to accept applications for short-term RSLs from groups wishing to apply in future for a community radio licence. However, we will not license such services in areas where there is no spectrum available to support any further community radio services. A list of these areas can be found at paragraphs 1.7-1.8 of Ofcom's statement on the second round of community radio licensing, which is available at: [www.ofcom.org.uk/radio/ifi/rbl/commun\\_radio/tlproc/secondround.pdf](http://www.ofcom.org.uk/radio/ifi/rbl/commun_radio/tlproc/secondround.pdf).
- 3.14 The **ACS** suggested that we should devolve part of the RSL licensing process to Ofcom's national offices. We consider that this potentially would make the process slower and less efficient, and therefore we have decided such an arrangement would not be in the best interests of applicants. However, colleagues at the national offices will continue to provide relevant information, as appropriate, relating to any applications proposing to provide a restricted service for a locality in their respective nations.
- 3.15 One person noted that the BBC's "unused frequencies" could accommodate S-RSLs. This is already the case. Our planners first look to utilise a frequency in the sub-band 87.7 to 87.9 MHz (a sub-band of VHF Band II currently allocated for S-RSLs). Then

<sup>6</sup> These qualities have been illustrated to interested parties through our policy of inviting stakeholders to the draws for licences covering major events (e.g. Ramadan) where possible.

they seek frequencies within the bands used by commercial radio stations, and finally they may, after discussion with the BBC, use frequencies within the bands traditionally used by BBC radio services. The same respondent also suggested that if S-RSLs were moved off 87.7 to 87.9 MHz this sub-band could be used for a national community radio station. We are not currently proposing any change to VHF Band II (87.5 to 108 MHz) usage. However, the future use of this spectrum will be considered as part of Ofcom's Future of Radio project.

- 3.16 **Sunrise FM**, a commercial radio station in Bradford, suggested that we should run closer checks on S-RSL applicants and licensees and introduce three tiers of S-RSLs (profit-making, community-focused and non-profit) charged at different rates. While we seek to verify statements made in application forms where and when necessary, we consider that S-RSLs should remain a quick and flexible form of radio broadcasting licence. In addition, we consider that introducing new sub-categories of restricted service licence would be inconsistent with our general intention to streamline this category of licence as far as possible.
- 3.17 One respondent wanted Ofcom to offer S-RSL operators in urban areas the option to use an aerial transmitter over 20 metres above ground level, and thus we considered allowing an increased aerial height and corresponding reduction in power level for S-RSLs. However, due to potential aeronautical issues, such an option is not practicable. S-RSLs have a usual minimum lead-time of six weeks and to license services operating outside the usual parameters, including antenna height, would require additional checks and clearances. It is estimated that this might take some months. We consider that this is an unacceptable delay for a licensing regime that is designed to be quick and efficient.
- 3.18 Two respondents made reference to S-RSLs on the medium wave band. One suggested that we should extend 'sporting RSLs', short-term (generally 28-day) AM RSLs licensed for a season and broadcast on non-consecutive dates, to non-sporting events. The other respondent suggested that we should have two sets of rules for S-RSLs; one for FM and another, more liberal, for AM, to reflect the current low level of demand for AM licences and encourage more operators to use AM. We consider that extending the availability of short-term event-based non-consecutive RSLs on AM to non-sporting events will allow for increased flexibility for applicants, and thus intend to adopt this policy henceforth. However, we do not believe that it is practical or necessary to have two sets of rules for S-RSLs (one for AM and one FM) because it could create an additional layer of complication when our aim is to simplify the regulation of these licences.
- 3.19 In summary, as a result of these suggestions we will:
- continue to seek relevant input from Ofcom's national offices, as appropriate; and
  - extend the availability of short-term, event-based RSLs on AM on non-consecutive dates, to non-sporting events.

### Allowing commercial establishments to hold L-RSLs

- 3.20 Prior to the consultation we had been contacted by a number of commercial establishments (for example, marinas, theme parks and shopping centres), asking us to lift the current restriction on commercial establishments holding L-RSLs. Given that this would allow for a greater range of L-RSLs without compromising the distinction between this type of licence and either commercial or community radio licences

(namely the fact that L-RSLs are for site-only services), we proposed making L-RSLs available to commercial establishments.

*Question 4) Do you agree with the proposal to allow commercial establishments to apply for L-RSL licences?*

- 3.21 Ten of the eleven respondents to this question supported the proposal to allow commercial establishments to apply for L-RSLs. For example, a respondent who asked for his name and contact details to be withheld said that the proposal was a “great idea” and that he agreed “with all the points outlined” and believed “that this move would release restrictions that are not needed”. However, one of the respondents who supported the proposal cautioned that commercial establishments should not be allowed to operate L-RSLs as long-term trial services, and two others added that this policy should not be allowed to impinge upon frequency availability for S-RSLs or community radio, respectively. In this context, we note that L-RSLs are granted to provide a service for a particular site only, and therefore generally not suitable for trial services for the wider community. We also note that frequencies for L-RSLs are drawn from a specific pool, and that once this pool is exhausted in an area no more L-RSLs will be licensed. Moreover, L-RSLs tend to be licensed on medium wave (use of VHF for L-RSLs is restricted to areas where there is sufficient suitable spectrum available, such as parts of Scotland) while the majority of S-RSLs and community radio stations are licensed for use of VHF.
- 3.22 Only one respondent, **Afan FM**, a community radio service for Neath and Port Talbot, opposed the proposal. Afan’s objection centred on the potential for commercially-held L-RSLs to adversely affect advertising revenue at community or smaller-scale commercial radio stations. It is possible that commercially-held L-RSLs might attract some advertising revenue from neighbouring or overlapping community or commercial services. However, community radio stations are restricted to a maximum of 50% of their annual income from the sale of advertising and sponsorship, and should seek the remainder from other sources, such as grant funding. Therefore the impact of L-RSL commercial activity on community radio services may not be significant. Furthermore, L-RSLs held by either commercial or non-commercial establishments are likely to remain of relatively limited interest to advertisers by virtue of the prohibition on editorial acknowledgement by L-RSLs of coverage outside the establishment for which the service is licensed (also known as “overspill coverage”). In this context it should also be noted that one of Ofcom’s overarching duties is “to further the interests of consumers in relevant markets, where appropriate by promoting competition”<sup>7</sup>.

## Policy conclusion

- 3.23 Given the support for this proposal we will allow commercial establishments to hold L-RSLs on the same basis as non-commercial establishments.

## Flexibility over the length of L-RSLs

- 3.24 L-RSLs are currently issued for a five-year period, and are renewable. We proposed offering licences for specific periods of up to five years, as this flexibility may be helpful to some potential applicants. In order to keep the administrative burden to a minimum while enabling this extra flexibility the length of L-RSL licences would be calculated in increments of six months and each licence would run for a minimum of one year.

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<sup>7</sup> Section 3(1)(b) of the Communications Act 2003

*Question 5) Do you agree with the proposal to offer L-RSLs for one-year as well as five-year periods?*

- 3.25 Nine of the eleven responses to this question supported the proposal to offer L-RSLs for shorter periods (minimum one year) in order to increase flexibility.
- 3.26 **Radica Broadcast Systems**, a supplier of radio broadcast equipment, noted that five-year licences reflected the financial commitment required to set up an L-RSL but suggested that if there is sufficient demand for flexibility Ofcom should respond to it.
- 3.27 **Afan FM** rejected the proposal because it feared that shorter-term L-RSLs might begin “focusing [their] resources on just one period of the year”. However, we intend to grant licences for a minimum of one year, and not less.

### Policy conclusion

- 3.28 In light of the support for this proposal, we will grant L-RSLs for between one year and five years in length. This term will be measured in six monthly increments. We believe this policy will provide the flexibility to allow for services catering to different audiences (or for distinct purposes) to be held within a single establishment under a single L-RSL, without tying the said establishment to a full five-year licence.

### Comments and suggestions regarding existing L-RSL policy

- 3.29 Having considered the two specific issues outlined above, we also asked for any further suggestions or comments regarding our existing L-RSL policy.

*Question 6) Do you have any comments on other areas of L-RSL policy, as set out in the ‘Notes for Applicants’ that you would like to bring to our attention?*

### Policy suggestions and conclusions

- 3.30 Only three respondents made specific suggestions regarding current L-RSL policy:
- 3.31 **BALPAA**, the trade association representing leisure parks and attractions, noted the interest of its members in operating L-RSLs that cover the area around their attractions rather than solely within them. **Radica** also raised this consideration and suggested that commercial establishments with L-RSLs might be allowed to make editorial acknowledgement of overspill coverage through traffic and travel information only. Finally, the **Hospital Broadcasting Association (HBA)**, having also expressed its interest in L-RSLs that could acknowledge overspill coverage, asked for “some additional flexibility as to the maximum transmission power allowed for L-RSLs”.
- 3.32 With regard to the first point, as we noted in the consultation, there are alternative broadcast licences available for those who wish to cover a wider area, and the rule prohibiting editorial acknowledgement of overspill coverage outside an establishment, is a key point of difference between L-RSLs and commercial radio, community radio or short-term RSL services. Therefore, we do not intend to change this policy.
- 3.33 Turning to the second point, 1 watt emrp (AM) or 50 mW erp (FM) is generally sufficient for most L-RSL sites. However we are prepared to consider licensing services at a higher power on a case-by-case basis. Nonetheless, this would be for coverage of a specific site only and would not allow for overspill.

- 3.34 In summary, as a result of these suggestions we will consider licensing a service on a higher transmission power than has been the maximum to date, where the standard power level does not allow for adequate coverage of the licensed establishment site.

### **Implementation of new RSL policies**

- 3.35 New Notes of Guidance for RSLs encompassing these policy changes are being published at the same time as this statement :  
<http://www.ofcom.org.uk/radio/ifi/rbl/rsls/rslapps/notes.pdf>.

## Section 4

# ADS: Summary of responses with policy conclusions

## A permanent scheme for ADS

- 4.1 Ofcom has been running an experimental licensing scheme, or trial, for Audio Distribution Systems (ADS) since June 2004. This trial has enabled spectators at particular events to listen in to referees' commentary on sporting occasions, or to hear a relay of content which is already subject to the provisions of a Broadcasting Act licence. However, ADS are also available for alternative uses, for example translations of a conference presentation.
- 4.2 For the purposes of the trial ADS have been licensed to use spectrum between 60.75 to 62.75 MHz (which is used for very short-range services, for example within a stadium or conference facility) on a secondary and non-interference basis<sup>8</sup> with Programme Making and Special Events (PMSE)<sup>9</sup> users.
- 4.3 For the purposes of the trial ADS services have been licensed under the Wireless Telegraphy Act legislation only, and will continue to be so until its close, which is due at the end of June 2007. In the consultation, however, we noted that ADS services also fall within the category of restricted services as defined in section 245 of the Communications Act 2003 and that therefore it is a criminal offence under section 97 of the Broadcasting Act 1990 to provide such a service without the appropriate licence. Therefore, ADS services would be licensable under the broadcasting legislation and should be licensed under the Broadcasting Act (BA) once the trial ends, unless the Secretary of State exercised her power to make an order providing (in effect) that the provision of this type of service should be licence-exempt.
- 4.4 Given the commercial nature of the majority of these services (most ADS operators sell mobile receivers that are either pre-tuned or tuneable across a small range of frequencies to users at the entrance to events at which they are present) we do not believe it would be appropriate to seek a BA licence-exemption for ADS. Moreover, the DCMS has expressed to Ofcom the view that it would be unlikely to support such a move. In this context we note that the proposal to enable ADS to carry self-generated content including commercial messages could make the content on these services virtually indistinguishable from other types of radio broadcast service that require a licence under the Broadcasting Act.
- 4.5 Having considered the findings from this trial and the outcome of our review in the consultation we proposed the introduction of a permanent licensing scheme for ADS. We specified that ADS would need to be licensed under both the Broadcasting Act 1990 (BA) and the Wireless Telegraphy Act (WTA), and also proposed that such

<sup>8</sup> Licensing on a secondary basis means that if there are insufficient frequencies to allow both PMSE and ADS licensees to be present at the same event the PMSE user will be licensed. Licensing on a non-interference basis means that if there was a further frequency available for an ADS service but it was calculated that it would cause interference to the primary user (i.e. the PMSE licensee) the ADS applicant would not be licensed for this event.

<sup>9</sup> PMSE licensees employ high-powered radio microphones to deliver content which will be used for broadcast purposes from one location to another within a single establishment.

services should be allowed to carry self-generated content (including commercial messages which comply with the Broadcasting Code).

Question 7) *Do you agree that we should license 'ADS-RSLs' once the ADS trial ends on 31 August 2006?*<sup>10</sup>

- 4.6 All eighteen respondents to this section of the consultation supported our proposal to license ADS once the trial ends and to remove the current restrictions on the carriage of both self-generated content and commercial messages. This group of respondents included the **RNIB**, which commented that ADS would be necessary in enabling 'providers of services' to meet the legal requirement to "provide a reasonable alternative method of making the service in question available to disabled persons"<sup>11</sup>.

## Policy conclusion

- 4.7 In light of the unanimous support for this proposal we will introduce a permanent licensing scheme for ADS at the end of the current trial. This policy will give ADS operators certainty regarding the continuance of this type of service and flexibility regarding the content they may provide, while recognising that it is appropriate for all ADS services, whether or not they choose to carry self-generated content (including commercial messages), to be subject to broadcasting regulation.

## Technical aspects of ADS

- 4.8 In the consultation we considered a number of technical issues relating to ADS services. These included: the 'non-interference', 'non-protection' nature of these services, the appropriate power level for these services, and the likelihood of either outgoing or incoming interference from or to these services.
- 4.9 As a result of these considerations we proposed:
- to allow use of 60.75 to 62.75 MHz for the use of ADS on a 'non-interference', 'non-protection' basis – that is, ADS must not cause interference to and will not receive any protection from interference caused by PMSE use of this spectrum;
  - to maintain power levels at current levels (typical effective radiated power of 0.5 to 1.0 watt); and
  - to continue to remind ADS licensees of the potential for interference into their receivers and the appropriate remedies.
- 4.10 We also reserved the right to amend the use of the 60.75 to 62.75 MHz band should circumstances warrant, although we noted that we did not believe that a review of this spectrum is likely to be necessary in the short-term (i.e. the next three to five years).

<sup>10</sup> On 8 August 2006 the ADS trial was extended to 30 June 2007 (with the date to be kept under review).

<sup>11</sup> Under Section 21 (2) (d) of the Disability Discrimination Act 1995 (the DDA) service providers are legally bound to provide all visitors with an equalised event experience. The intention is to use audio description broadcasts as an alternative method of making the service in question available to disabled persons". Section 21 (4) of the DDA goes on to clarify that "regulations may prescribe...an auxiliary aide or service (which) would enable disabled persons to make use of a service".

4.11 In addition, we outlined our view that:

- interference tends to be incoming from primary PMSE users into secondary ADS users and the potential for interference arises largely from the build of the ADS receivers; and that
- as a result of systems put in place by our current licensing contractors, there is no question of the primary users of the band being crowded-out by ADS operators at those regular events/venues where the programme-makers are known to make heavy use of the 60.75 to 62.75 MHz band.

*Question 8) Do you agree with the technical characteristics of the licence? If not, what alternative proposals do you have in mind?*

*Question 9) Do you agree with our conclusions on the potential interference issues concerning shared programme-making use of the spectrum? If you disagree, please give reasons.*

*Question 10) Do the current arrangements ensure that programme-making use of the sub-band at “known” events is adequately safeguarded?*

- 4.12 All twelve respondents to comment on the technical characteristics of ADS licences broadly agreed with the proposals. However, five mentioned the issue of incoming interference to ADS services and two of these questioned why ADS were licensed on a secondary and non-interference basis to PMSE. **Sportslink**<sup>12</sup> (one of the two main trial ADS operators) suggested that ADS should be allowed to operate at power levels greater than 1 watt. **JFMG** (the company that currently licenses the trial ADS services) noted that operators had shown interest “in increasing the permitted power of ADS” in order to give coverage of points of sale just outside a stadium. However, it made clear that this “may well require closer coordination of the physical deployment of ADS and PMSE and is likely to need an increased frequency gap to co-sited PMSE users.”
- 4.13 Ten of the eleven responses to the question on potential interference issues agreed with our conclusions. However, two respondents argued that ADS should be given the same protection from interference as PMSE users. The one respondent who disagreed with our conclusions did not explain why.
- 4.14 Only seven people responded to the question about safe-guarding PMSE use at specific events. Six agreed that the current arrangements give adequate protection for PMSE users for ‘known’ events (i.e. those included in an established event calendar). However, two of these suggested making additional spectrum available to ADS to address the few occasions where ADS cannot be accommodated alongside PMSE use, and one respondent suggested that if the arrangements went any further we would be showing a “bias towards PMSE”. **Ascot Race Course** noted its view that ADS should be treated in the same way as PMSE, and should not be precluded from broadcasting at any event because of PMSE prioritisation.

<sup>12</sup> Sportslink also asked why we prevent ADS receivers from receiving AM and FM signals. It should be noted that the design of ADS receivers is determined by the market and that we do not prevent them from being designed to receive AM and/or FM signals.

## Policy conclusion

- 4.15 In light of the positive out come of the trial, in terms of the ability of ADS as currently defined to co-exist with PMSE use, and the responses to these questions, we will maintain the technical specifications outlined above (including maximum permitted power levels of between 0.5 and 1 watt e.r.p).
- 4.16 In the context of some of the additional comments made by respondents to these questions, it is worth noting that incoming interference to ADS services could be much reduced or eliminated if ADS operators deemed it to be in their commercial interest to invest in improving the reception of their services for listeners.
- 4.17 We do not intend to enable ADS to transmit at higher power levels because they are designed to be site-only services and not to cover the surrounding area.
- 4.18 With regard to the issue of different levels of spectrum access for PMSE and ADS, Ofcom currently considers that facilitating programme broadcasting (particularly that which may well provide a particular benefit to the wider public such as coverage of sporting events for those who cannot be present) is of greater value to both citizens and consumers than the provision of the majority of ADS-type services. It is for this reason that ADS are being given secondary and non-interference based access to spectrum that they would share with PMSE users. However, we will continue to monitor the development of demand for spectrum use for both PMSE and ADS.
- 4.19 Finally, the arrangements which involve publicising events where it can be anticipated that heavy programme-making use of the spectrum will preclude the provision of any ADS licences will be maintained.

## Licence duration and site-based services

- 4.20 Trial ADS licences are restricted to a maximum duration of five days (tied to a particular event) and applications for licences are not been permitted more than three months before the start of the licence period. Applicants have been able, however, to apply for a series of consecutive "five-day" licences, albeit that there have been no guarantees regarding the consistent availability of spectrum for particular ADS licences. These arrangements were put in place to safeguard priority access to the spectrum by PMSE users.
- 4.21 However, given that we have had requests for both longer-term (up to one-year) and site rather than event-based ADS licences, we consulted on the possibility of making these available on a case-by-case basis.

*Question 11) If circumstances permit, should 'ADS-RSLs' be available for longer than five days, and if so what is/are the appropriate licence duration(s)?*

*Question 12) If circumstances permit, should the link between an "event" and an 'ADS-RSL' be removed to permit general "site" based licences?*

- 4.22 The proposal to make longer-term ADS licences available, where circumstances permit, was supported by twelve of the fourteen people to respond to this question. One respondent noted that this would allow flexibility for coverage of longer events, for example the Olympics, and another suggested that one-year licences would be more attractive given the costs of setting up an ADS service. In the same vein, the **RNIB** noted that longer-term ADS licences would be more affordable for non-

commercial services. **Ascot Race Course** concurred “that ADS licences should be available, at Ofcom’s discretion, for a duration of up to one year”. However, it also suggested applicants should be able to book ADS up to a year in advance. As noted in the consultation, we believe that the current arrangement, whereby applications may only be received up to three months in advance of broadcast, is appropriate because it lessens the likelihood of a major programme-making requirement emerging at, or near to, a venue that needs to use the relevant frequencies after an ADS licence has been issued. One person rejected the proposal and one said he was “not too sure”. However, neither of these respondents included an explanation of their views.

- 4.23 Ten of the twelve people to respond supported the proposal for site-based licences outright. The **National Association for Disabled Supporters** noted that this is a sensible option “if a permanent site has an ongoing requirement for the service for events that would otherwise require licensing individually”.
- 4.24 Of the other two respondents, one indicated that he would welcome this proposal if there was sufficient spectrum available to allow longer-term site-based ADS without PMSE being “crowded out” while the other did not explain why he was unsure about the proposal. It should be noted that PMSE use would have precedence within the spectrum between 60.75 to 62.75 MHz and that it was for this reason that we proposed applying this policy only “if circumstances permit”.

### Policy conclusion

- 4.25 In light of the support for these proposals we will allow longer-term (up to one year) and/or site-based licences, where circumstances permit. These decisions will be made on a case-by-case basis. We believe that these policies will offer welcome flexibility to ADS operators without compromising our ability to meet the needs of PMSE users.

### Allowing ADS services to operate in other frequency bands

- 4.26 Having been made aware that there might be greater demand for ADS services than could easily be accommodated on a secondary and non-inference basis within the sub-band allocated for this purpose, we consulted upon the possibility of allowing ADS to operate in spectrum outside 60.75 to 62.75 MHz (the spectrum to which such services currently have access on a shared basis with PMSE).

Question 13) *Do you agree that the availability of 'ADS-RSL' licences should be extended to 'non broadcast' frequency bands other than 60.75 to 62.75 MHz?*

- 4.27 Twelve of the fifteen respondents to address this question supported the proposal to allow ADS beyond the current allocation (60.75 to 62.75 MHz). There was some discussion from a few of these respondents about the desirability or not of using interleaved UHF spectrum for ADS. In this context it is worth noting that the future use of UHF spectrum is being considered as part of the Digital Dividend Review.
- 4.28 One respondent opined that because ADS are effectively aimed at a ‘closed user group’, they should not use spectrum which has been set aside for broadcasting. We note that spectrum is no longer divided between broadcasting and non-broadcasting in this way. We also note that, in any case, the proposal concerns allowing ADS to be made available in principle in what was formerly described as ‘non-broadcast spectrum’.

## Policy conclusion

- 4.29 In light of the support for the proposal we will in principle grant BA licences for ADS services which intend to use spectrum other than 60.75 to 62.75 MHz, should the operator in question have secured access to suitable spectrum through a WTA licence that allows for this use. It should be noted that this policy does not amount to an allocation of additional spectrum for ADS use. Further, it would only come to fruition if an operator had been able to secure access to suitable spectrum usage rights, for example by purchasing those rights at auction or by the trading of those rights from the relevant licensee, and decided to use them for this purpose.

## Administration of ADS licences

- 4.30 In the consultation we briefly discussed the cost and administration of ADS licences. Within this discussion we noted that “we would need to work out how best to administer these licences in order to keep costs as low as possible while maintaining the necessary safeguards in terms of spectrum usage and content provision”. We noted that this would include a consideration of whether or not we should continue to use a sub-contractor to license these services. Finally we acknowledged that, given the need for ADS operators to be licensed under the Broadcasting Act, outsourcing the ADS function in its entirety would result in the first externally issued Broadcasting Act licence. We then asked if respondents had any comments on these matters.

Question 14) *Do you have any comments regarding the costs and administration of 'ADS-RSLs'?*

- 4.31 Ofcom received ten responses to this question. These responses are encapsulated in the comments noted below.
- 4.32 The **National Association of Disabled Supporters** commented that because ADS would be used to meet Disability Discrimination Act requirements (see section 4.6 above), the costs should be kept low and, having noted that the costs of ADS prohibit smaller clubs from running weekly services, the **RNIB** suggested licences should be free or charged at nominal rates. Taking the opposite stance, an unnamed respondent commented that given that ADS “are operated as a commercial enterprise rather than a public service<sup>13</sup>, it is appropriate, therefore, that the licence fee should reflect the true value of the spectrum used (by whatever mechanism Ofcom chooses to calculate this), if such value exceeds the basic licence administration costs”. The **HBA** suggested that the cost of ADS licences should be in line with the costs of other RSL services.
- 4.33 None of the consultation respondents objected to the suggestion that Ofcom might contract out ADS licensing, and two organisations which are familiar with restricted service broadcasting recommended that a new contract to license ADS should be awarded to JFMG.

## Policy conclusions

- 4.34 Since the consultation closed, we have been considering more closely how best to administer ADS in light of the fact that operators will need to be licensed under both the Wireless Telegraphy and the Broadcasting Act legislation.

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<sup>13</sup> This is the case for the majority but not all ADS services.

### **WTA Licence for ADS**

- 4.35 We intend to amend the standard terms of sound link service licences in order to extend the purpose of this type of licence (which is currently used for PMSE) also to include ADS.
- 4.36 This solution requires a relatively contained amendment process, provides a suitable WTA licence for this type of service (indeed, it is the same type of licence that has been used for the purposes of the trial) and would continue to enable Ofcom to exercise the appropriate level of control over the use of spectrum for ADS.
- 4.37 The use of spectrum for ADS services will continue to be charged on the same basis as that for PMSE, as has been the case throughout the trial.

### **BA Licence for ADS**

- 4.38 We intend to issue five-year RSLs that permit rather than oblige ADS services to be broadcast via wireless telegraphy. Operators should note that the issuing of an RSL for the provision of ADS does not in itself confer any rights over particular spectrum. It will be up to the operator to secure access to spectrum through a WTA licence that allows for this use.
- 4.39 These licences would limit the licensee to the provision of ADS services (i.e. the services which it would have permission to broadcast (should it be able to secure access to spectrum) may only be transmitted within a single site and at an effective radiated power (e.r.p) of between 0.5 and 1.0 watt).
- 4.40 We will grant a single BA licence to each ADS operator, irrespective of the number of services that will be provided under the licence, whether or not these services are concurrent or sequential, and whether or not they are located at the same or different venues. It would be a condition of the licence that the licensee would have to inform Ofcom of any change(s) to the details of the BA licence regarding the services broadcast under the licence at any particular time. These details would encompass the type of service to be broadcast, the location, timing and duration of that service and, if appropriate, the event around which the broadcast is to be based.
- 4.41 This course of action will reduce the administrative burden on both the licensees and the regulator, as compared to having separate BA licences for each service, while ensuring appropriate compliance with the relevant broadcasting legislation. It should be noted that, given the specific nature of ADS services, this policy does not set a precedent for other types of broadcasting service to be operated under a 'blanket' BA licence.
- 4.42 BA licences are charged on a cost recovery basis. The fees will be announced prior to the launch of permanent scheme for licensing ADS next summer (once the current trial has ended). However, it is likely that they will, like other BA licences, be calculated through two elements: the cost of licensing and the cost of ongoing content regulation.

## Contracting-out

- 4.43 We will contract-out the WTA licensing function for ADS within any 'established allocation' for this purpose. By 'established allocation' we mean any spectrum to which Ofcom has agreed ADS specifically could have access, whether on a sole use or shared basis. The only spectrum to which this description currently applies is that between 60.75 to 62.75 MHz.
- 4.44 Ofcom has an existing contracted out solution for the WTA licensing of PMSE (including PMSE use within 60.75 to 62.75 MHz, the spectrum to which ADS will continue to have secondary and non-interference based access) through JFMG. By virtue of the fact that it already manages PMSE access to this spectrum JFMG will be able to manage the frequency planning process for ADS more efficiently than Ofcom could if we took this function in-house. It should be noted that contracting-out the WTA licensing function for ADS will require Ofcom to secure a new order under the De-regulation and Contracting-out Act 1994 (DCOA).
- 4.45 We will not contract-out the BA licensing function for ADS because of the need to address the discretionary elements in BA licensing and because, as outlined above, there is a suitable in-house alternative which will keep the regulatory burden to a minimum. The discretionary elements referred to above are:
- the statutory requirement that a BA licensee is a 'fit and proper person' to hold a licence and is not disqualified from holding a broadcasting licence; and
  - the statutory requirement in the case of a religious body that it be approved as an appropriate body to hold a BA licence by means of the 'determination' process already established for this purpose within Ofcom.
- 4.46 BA licences issued for the provision of ADS services will be subject to the same programme and fairness standards regulation as all other BA licences.

## Section 5

# Unused spectrum between 55 and 68 MHz: Summary of responses with policy conclusion

- 5.1 There is spectrum in the 55 to 68 MHz band that is very little used. Specifically, this includes two blocks of 4 MHz, one below and one above the 60.75 to 62.75 MHz currently allocated to mixed PMSE/ADS use. There are also two other established uses. These are: sole PMSE use at the top and bottom of the band and MoD wind profiler radars. The radars can be allocated between 46 and 68 MHz, provided each assignment is co-ordinated with other users. At present the only such use between 55 and 68 MHz is on South Uist in the Hebrides.
- 5.2 In the consultation we asked for expressions of interest in use of the unused spectrum between 55 and 68 MHz.

Question 15) *Do you foresee interest in accessing up to 8MHz of frequencies in the 55 to 68 MHz band that are presently almost unused, and if so for what types of service and/or technology? Do you have any views on how Ofcom might release this spectrum to the market for use?*

- 5.3 Just thirteen people responded to the open question regarding potential use of this spectrum indicating that there might be insufficient demand to warrant options such as auctioning this spectrum at present. Seven of the thirteen respondents suggested using the spectrum for ADS. **Sportslink** noted that widening the spectrum available for ADS would allow for simultaneous multi-lingual services at the same place, while a confidential respondent suggested interleaving PMSE use with whatever other services are allocated to use the spectrum. **JFMG** noted that if we do not allocate this spectrum for ADS use it would make it considerably harder to license longer-term (up to one year) ADS licences, the proposal for which won support among consultation respondents (see section 4.22 above). Other suggested uses included DRM<sup>14</sup>, a means of digital audio transmission, and either point-to-point or point-to-multi-point links for outside broadcasts.

## Policy conclusion

- 5.4 While the responses do not show a clear demand for a specific use for this spectrum, we believe that commercial interest in this spectrum may increase over time. However, we do not believe that other uses should be prevented in the short term. Therefore, Ofcom will consider any request for use of the currently unused spectrum between 55 and 68 MHz on a case-by-case basis. It should be understood that there will be no guarantee regarding the length of time for which this spectrum will be available on this basis and that Ofcom reserves the right to change the use of this spectrum with no more than one year's notice to any existing users.

<sup>14</sup> This spectrum is more attractive to the organisations developing and testing DRM because it is less liable to sporadic E and F layer propagation (sunspot activity which disrupts transmission) than the current allocation for DRM testing at 26 MHz and it is closer to a Band II allocation which these organisations think would be most appropriate for permanent DRM services.

- 5.5 This policy reflects the fact that the consultation elicited a small number of responses in relation to this issue, and that these responses offered only a narrow range of options for the use of this spectrum. It has the benefit of allowing the spectrum to be allocated for any use which we judge to be appropriate (perhaps including some of those suggested in the consultation responses: for example ADS, PMSE, and DRM testing) in the short-term while also maintaining flexibility over its longer term use.

### **Requests for unused spectrum between 55 to 68 MHz**

- 5.6 As part of its contract to allocate spectrum for PMSE<sup>15</sup> use JFMG is contracted to manage the following allocations that are either entirely within or overlap the 55 to 68 MHz band: 53.75 to 55.75 MHz, 60.75 to 62.75 MHz and 67.75 to 67.84 MHz.
- 5.7 We will alter JFMG's contract to enable it to also consider requests for either PMSE or ADS use of the 'unused spectrum' between 55 and 68 MHz<sup>16</sup>. This will mean that if JFMG receives a request for PMSE or ADS use and a frequency is available (at the location and time required) within the 'unused spectrum' between 55 and 68 MHz JFMG can issue an appropriate WTA licence.
- 5.8 The fact that ADS can make use of unused spectrum between 55 and 68 MHz does not make this an 'established allocation' for ADS (see section 4.43 above) because it is simply one of any number of potential uses to which this spectrum may be put rather than a specific use, whether on a sole or shared basis, that Ofcom has agreed for this spectrum.
- 5.9 Ofcom will consider all other requests for alternative uses of this spectrum, for example DRM testing, directly and will assess whether an appropriate WTA licence for the purpose defined in the request exists. However, it may well consult JFMG with regard to the frequency availability and interference issues pertaining to such requests.

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<sup>15</sup> Spectrum for PMSE can be allocated at a range of specific locations between 47.55 MHz and 8500 MHz.

<sup>16</sup> By unused spectrum we mean spectrum between 55 and 68 MHz that excludes 60.75 to 62.75 MHz (which will be allocated to mixed PMSE/ADS use), the other PMSE allocations in this band and any other existing allocations, for example MoD wind profiler radars which can be allocated between 46 and 68 MHz provided each assignment is co-ordinated with other users.