



Consultation on the Airwave 'sharers list' regime under wireless telegraphy licences granted to Airwave mmO2 Limited

Consultation

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Section 1

The consultation

1. Given that the sharers list regime will continue by virtue of terms in O2's Airwave wireless telegraphy licences and that Ofcom will carry out the procedure for updating the sharers list do stakeholders agree that
 - the procedures and criteria which Ofcom will apply when considering future applications for inclusion on the sharers list, ought to be as set out in paragraph 3.4 and Annex 5; and that
 - the timing and frequency of future consultations about further changes to the sharers list, ought to be as set out in paragraph 4.7?

How to respond

2. Ofcom invites written views and comments on the issues raised in this document, to be made by **5pm on Thursday, 13 May 2004**.
3. Ofcom strongly prefers to receive responses as e-mail attachments, in Microsoft Word format, as this helps us to process the responses quickly and efficiently. Please can you send your response to robert.emson@ofcom.org.uk.
4. Responses may alternatively be posted or faxed to the address below, marked with the title of the consultation.

Robert Emson
Mobile and Broadband Team
3rd Floor
Ofcom
Riverside House
2A Southwark Bridge Road
London SE1 9HA
Fax: 020 7783 4303

5. Note that we do not need a hard copy in addition to an electronic version. Also note that Ofcom will not routinely acknowledge receipt of responses.
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 3. It would also help if you can explain why you hold your views, and how Ofcom's proposals would impact on you.

Further information

7. If you have any questions about the issues raised in this consultation, or need advice on the appropriate form of response, please contact Robert Emson on 020 7783 4375.

Confidentiality

8. Ofcom thinks it is important for everyone interested in an issue to see the views expressed by other consultation respondents. We will therefore usually publish all

responses on our website, www.ofcom.org.uk, as soon as possible after the consultation period has ended.

9. All comments will be treated as non-confidential unless respondents specify that part or all of the response is confidential and should not be disclosed. Please can you place any confidential parts of a response in a separate annex, so that non-confidential parts may be published along with the respondent's identity.
10. We would be grateful if you could speed up our response-handling processes by completing a response cover sheet (see Annex 2) to indicate whether or not there are confidentiality issues. The cover sheet can be downloaded from Ofcom's website from the page where this consultation document appears.
11. Please also note that copyright in responses will be assumed to be relinquished unless specifically retained.

Next steps

12. Ofcom intends to publish a statement shortly after the end of the consultation period.
13. Please note that you can register to get automatic notifications of when Ofcom documents are published, at http://www.ofcom.org.uk/static/subscribe/select_list.htm.

Ofcom's consultation processes

14. Ofcom is keen to make responding to consultations easy, and has published some consultation principles (see Annex 1) which it seeks to follow, including on the length of consultations.
15. This consultation is shorter than Ofcom's standard 10 week period because this is a limited amendment to existing policy.
16. 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. 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, whose views are less likely to be obtained in a formal consultation.
17. If you would like to discuss these issues, you can alternatively contact Philip Rutnam, Partner, Competition and Strategic Resources, who is Ofcom's consultation champion:

Philip Rutnam
Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA

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Executive summary

- S.1 To provide the police with an improved secure radio communication system the Police Information Technology Organisation ("PITO") signed a framework contract in 2000 with British Telecommunications plc. The contract, (which was subsequently novated to O2), was to deliver a new digital mobile telecommunications service (known as Airwave) to the police forces in England, Wales and Scotland. The Airwave network is now being rolled out across the country.
- S.2 The purpose of this consultation is to seek views on proposals relating to the criteria and procedures which will be applied in relation to the Airwave "sharers list" regime under licences granted by Ofcom under section 1 of the Wireless Telegraphy Act 1949 ("wireless telegraphy licences").
- S.3 The term "sharers list" is commonly used to refer to the list of organisations within a closed user group to which Airwave mmO2 Limited ("O2") is permitted to provide its Airwave network services. Previously the closed user group was provided for by conditions in a licence granted under the Telecommunications Act 1984 ("the Telecommunications Act licence"), which was administered by the Department of Trade and Industry ("DTI").
- S.4 The Telecommunications Act licence was revoked as part of the recent reform of the communications regulatory regime by the Communications Act 2003. An obligation to provide Airwave network services only to organisations on the sharers list ("the closed user group obligation") will now be included as a term of O2's wireless telegraphy licences. The user group itself (the sharers) will be listed in a schedule to those licences.
- S.5 Future amendments to the sharers list will be made by variation of the Airwave wireless telegraphy licences. Wireless telegraphy licences are now granted and administered by Ofcom. Ofcom will apply procedures and criteria similar to those used previously by the DTI when inviting and considering further applications for inclusion on the sharers list.

Section 1

Background to the sharers list

- 1.1 To provide the police with an improved secure radio communication system the Police Information Technology Organisation ("PITO") signed a framework contract in 2000 with British Telecommunications plc. The contract, (which was subsequently novated to O2), was to deliver a new digital mobile telecommunications service (known as Airwave) to the police forces in England, Wales and Scotland. The Airwave network is now being rolled out across the country.
- 1.2 The frequencies assigned for use by the Airwave network are within the frequency band 380 to 400 MHz. This band was designated by the European Radiocommunications Committee ("ERC") for the introduction of 'Digital Land Mobile System for Emergency Services'. This harmonisation measure was set out in ERC Decision ERC (96)01 ("the ERC Decision"). All the spectrum assigned to O2 for use by the Airwave network is governed by the ERC Decision.
- 1.3 To ensure security, the Airwave network is encrypted and access to the network is limited to police forces, and other organisations who respond to emergencies.
- 1.4 The operation of the Airwave network previously required a Telecommunications Act licence. The organisations that were members of the closed user group were detailed in a list which was annexed to that licence. The term "sharers list" was commonly used to refer to the list of organisations within the closed user group to which O2 was permitted to provide its Airwave network services.
- 1.5 In order to run its network O2 also required several wireless telegraphy licences granted under the Wireless Telegraphy Act 1949. These licences authorised O2's use of radio spectrum. These licences referred to and contained obligations in relation to the sharers list. (The terms of specific wireless telegraphy licences are not made public.)
- 1.6 The licensing regime under the Telecommunications Act 1984 has been superseded by the new regime introduced by the Communications Act 2003. As a result O2's Telecommunications Act licence was revoked and replaced by a set of General Authorisations. The sharers list regime will therefore be continued under O2's wireless telegraphy licences which continue in force. To do this, the sharers list shall be included in a schedule to each of the wireless telegraphy licences and O2 shall be obliged by a licence condition only to provide Airwave network services to the organisations on the list. Where the list is to be amended in future, this will be done by licence variation.
- 1.7 The sharers list was last amended by the Secretary of State for Trade and Industry in May of 2003. The current list (which will be included in a schedule to each of the wireless telegraphy licences) is set out in Annex 4 of this consultation document.

Section 2

What does it mean to be included on the sharers list

- 2.1 Inclusion on the sharers list does not mean that an organisation has an automatic right to use the Airwave network. The effect of inclusion only means that O2 may make the network service available to such sharer organisations. It is then up to the parties to agree the contract terms.
- 2.2 Sharer organisations also require security clearance by the Cabinet Office before being permitted to use the Airwave network. This clearance relates to the use of the encryption algorithm used by the airwave network.
- 2.3 Assuming the successful conclusion of a contract with O2, and security clearance being granted, a sharer organisation is able to use the Airwave network to communicate with the core blue light emergency services (and with other sharer organisations). The Airwave network is not for public commercial use.

Section 3

DTI criteria for amending the sharers list

- 3.1 Wireless telegraphy licence variations which amend the sharers list will ordinarily only be made by Ofcom after carrying out the same (or substantially similar) procedures and criteria to those which were previously applied by the DTI in respect of changes to the sharers list under the Telecommunications Act licence. These are summarised below.
- 3.2 Because the ERC Decision restricted use of the frequencies to emergency services (for a digital land mobile system) the DTI's aim was to ensure that only those persons who demonstrated a legitimate requirement to communicate directly with emergency services personnel for emergency situations would be included on the sharer list. The ERC Decision noted that emergency services are intended to cover a range of services which may include police, security, customs, fire and ambulance. The DTI considered that emergency situations were situations which warranted a 999 call.
- 3.3 Under the DTI procedure, applicants who wished to be included on the sharers list were invited to reply to a standard list of questions. The responses were placed on the DTI website while they were reviewed by the DTI. Following the DTI's initial decision on which organisations of those which had applied should be added to the sharers list, respondents were allowed a 28 day period in which to make comments.
- 3.4 A copy of the questions used to assess requests to join the sharers list is included in Annex 5. The purpose of the questions was to draw out sufficient information that could be used to assess the organisations under the following guiding principles. The principles, in summary, were that the organisation:
- (A) responded to emergencies;
 - (B) was involved in emergency situations reasonably frequently;
 - (C) was civilian, or required to respond to civilian emergencies; and
 - (D) required interaction with those who respond to emergencies (the main purpose of being on the Airwave service is interaction by way of instant direct communication with the emergency services on the ground).
- 3.5 The DTI expected to see evidence that the non-emergency users within the organisation were clearly excluded from the application.

Section 4

Continuation of the sharers list regime

- 4.1 Clearly, the police have an interest in ensuring that secure use of police radio is protected. This is achieved by the requirement for security clearance, the encryption algorithm and by the continuation of the obligation on O2 only to provide the Airwave service to a closed user group.
- 4.2 Irrespective of that interest, Ofcom considers that it is in accordance with its spectrum management functions and its statutory duties (in particular its duties to secure the optimal use of spectrum and to have regard to the desirability of promoting the efficient management and use of the electro-magnetic spectrum) to continue to ensure compliance with the ERC Decision.
- 4.3 Including a closed user group obligation in O2's wireless telegraphy licences and continuing to apply the criteria (or similar criteria) applied by the DTI (when considering applications for inclusion on the sharers list) are appropriate ways of achieving compliance because:
- all of the spectrum assigned for use by the Airwave network is governed by the ERC Decision;
 - the closed user group obligation will limit the use of that spectrum to those organisations involved in emergencies and the spectrum will therefore be used in accordance with the ERC Decision; and
 - the DTI criteria correctly focussed on whether or not use of that spectrum by an organisation was in accordance with what was permitted by the ERC Decision.
- 4.4 Ofcom therefore propose to use the criteria detailed in paragraph 3.4 and seek the information set out in Annex 5 when assessing applications to join the sharers list.
- 4.5 Ofcom is conscious of the need to promote competition in the relevant markets. Ofcom will therefore aim to ensure that its decisions do not have the effect of distorting competition in relevant markets while still recognising that it is necessary to restrict use of the relevant frequency bands in accordance with the ERC Decision.
- 4.6 At all times in the application process Ofcom will aim to ensure transparency of procedures and that reasons are made available to the organisations affected by them.
- 4.7 Ofcom will keep under review the desire for organisations to be included on the sharers list and will invite applications annually upon demonstrable need. Ofcom notes that at present it appears that many of the possible organisations that would be interested in being included on the sharers list are already included.

Annex 1

Ofcom's consultation principles

How we will approach each formal consultation

Ofcom has published the following seven principles that it will follow for each written consultation. We believe that this consultation complies with the above principles however, we propose to close this consultation after a period of 5 weeks. This is shorter than the standard 10 week period as this is a limited amendment to existing policy.

Before the consultation

1. 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

2. We will be clear about who we are consulting, why, on what questions and for how long.
3. 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 version for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.
4. We will normally allow ten weeks for responses, other than on dispute resolution.
5. There will be a person within Ofcom who 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. This individual (who we call the consultation champion) will also be the main person to contact with views on the way we run our consultations.
6. If we are not able to follow one of these principles, we will explain why. This may be because a particular issue is urgent. If we need to reduce the amount of time we have set aside for a consultation, we will let those concerned know beforehand that this is a 'red flag consultation' which needs their urgent attention.

After the consultation

7. We will look at each response carefully and with an open mind. We will give reasons for our decisions and will give an account of how the views of those concerned helped shape those decisions.

Annex 2

Consultation response cover sheet

1. In the interests of transparency, we will publish all consultation responses in full on our website, www.ofcom.org.uk, as soon as possible after the consultation period has ended, unless a respondent specifies that all or part of their response is confidential. We will also refer to the contents of a response when explaining our decision, unless we are asked not to.
2. We have produced a cover sheet for responses (see below) and would be very grateful if you could send one with your response. This will speed up our processing of responses, and help to maintain confidentiality by allowing you to state very clearly what you don't want to be published. We will keep your completed cover sheets confidential.
3. We strongly prefer to receive responses in the form of a Microsoft Word attachment to an email. Our website therefore includes an electronic copy of this cover sheet, which you can download from the 'Consultations' section of our website.
4. Please put any confidential parts of your response in a separate annex to your response, so that they are clearly identified. This can include information such as your personal background and experience. If you want your name, 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: Consultation on the Airwave 'sharers list' regime under wireless telegraphy licences granted to Airwave mmO2 Limited

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

CONFIDENTIALITY

What do you want Ofcom to keep confidential?

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 to be confidential, 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. It can be published in full on Ofcom's website, unless otherwise specified on this cover sheet, and I authorise Ofcom to make use of the information in this response to meet its legal requirements. 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 3

Consultation questions

Given that the sharers list regime will continue by virtue of terms in O2's Airwave wireless telegraphy licences and that Ofcom will carry out the procedure for updating the sharers list do stakeholders agree that

- the procedures and criteria which Ofcom will apply when considering future applications for inclusion on the sharers list, ought to be as set out in paragraph 3.4 and Annex 5; and that
- the timing and frequency of future consultations about further changes to the sharers list, ought to be as set out in paragraph 4.7?

Annex 4

The List of Sharers (Updated May 2003)

Adjutant General's Corps - Provost Branch

Air Ambulance

Air and Land Search and Rescue Organisations

Airport Fire Brigade

Allied Forces based in or transiting the UK and, while in the UK, performing identical functions to those others on the list of sharers

Ambulance services of England, Scotland, Wales and Northern Ireland

Armaments Transport operations

Armed Forces Bomb Disposal teams

Army Ambulance

Army Air Corps Air Traffic Controllers and Air Station Operations

Army Fire

Army regional Brigades:

51 (Highland) Brigade

42 (North West) Brigade

143 (West Mercia) Brigade

43 (Wessex) Brigade

145 (Home Counties) Brigade

52 (Lowland) Brigade

15 (North East) Brigade

160 (Wales) Brigade

49 (East) Brigade

2 (South East) Brigade

HQ Northern Ireland

HQ London

2 Signal Brigade

Atomic Weapons Establishment

British Transport Police

Borough Parks Police

CCTV control rooms (where there is a need to have CCTV information fed through directly to blue light emergency services users)

Coastguard Service

Defence Fire Service

Donor organ and transplant team transport

Customs & Excise Enforcement Branch and National Investigation Service

Environment Agency Enforcement Officers

Environment Agency Environmental Crime Unit

Environment Agency Flood Defence Engineers

Environment Agency Flood Defence Officers

Environment Agency Navigation Officers

Fire Brigades of England, Scotland Wales and Northern Ireland

Firing Range Security

Fraud Investigation Section of Department of Social Security

Government or Local Authority funded and managed Uniformed Street Wardens

Highways Agency Integrated Incident Management Personnel

Highlands Council Roads Maintenance Personnel

Home Office Fire & Emergency Planning fire appliances and assigned personnel

Home Office Immigration Service Intelligence & Investigation Unit

Immediate Care Schemes (e.g. BASICS)

Inland Revenue Special Compliance Office

Intelligence Corps

Joint Service Liaison (Emergency)

Local Authority Emergency Planning Departments

MOD Guard Service

MOD Police

MOULD replacement

Control Rooms in Naval Establishments

Navy Ambulance

Navy Fire

Navy Police

NHS Community Trust Staff

NHS Hospital Trust Staff

NHS Primary Care Groups and Primary Care Trusts

Nuclear Accident Response Organisation (NARO)

Nuclear Industry [1] Emergency Response Teams

On-site Fire Services (Magnox and BNFL sites)

Patient Transport Services

Police forces of England, Scotland, Wales and Northern Ireland

Ports Police

Post Office Security and Investigation Service

Prison Service

Private Ambulance Services

Private Prisoner Transport

Privatised Police Patrols (including stadia and complexes)

RAF Ambulance

RAF Air Traffic Controllers and Air Station Operations and Security

RAF St Athan

RAF Aldergrove

RAF Cottesmore

RAF Crash Response Organisation

RAF Fire

RAF Leuchars

RAF Linton

RAF Lyneham

RAF Nuclear Accident Response Organisation

RAF Odiham

RAF Police

RAF Provost & Security Service

RAF Regiment

RAF Search and Rescue

RAF Shawbury

RAF Uxbridge

RN Air Stations: Prestwick, Culdrose and Yeovil

RN Naval Operations and Security

RNLI

Royal Marines

Royal Marines Police

Royal Military Police

Royal Parks Constabulary

RSPCA Inspectors

RSPCA Animal Collection Officers

Security Service

Special Forces

UK activities of the Tactical Communications Wing

Traffic Wardens

Transco Gas Emergency Services Personnel

UK Immigration Service - Ports and Enforcement Directorate

UKAEA Constabulary

Volunteer First Responders

Waterway, Tunnel and Airport Police

Water Industry [2] Event Response Team Personnel

[1] NUCLEAR INDUSTRY

British Energy Generation Ltd

British Energy Generation (UK) Ltd

BNFL

BNFL Magnox Generation

[2] WATER INDUSTRY

Anglian Water Services Ltd

Bournemouth & West Hants Water plc

Bristol Water plc Welsh Water

Cambridge Water plc Northumbrian Water Ltd

Dee Valley Water plc

Essex & Suffolk Water plc

Folkestone & Dover Water Ltd

Hartlepool Water plc

Mid Kent Water plc

North West Water Ltd

Portsmouth Water plc

Severn Trent Water Systems Ltd

South East Water plc

South Staffordshire Water plc

South West Water Services Ltd

Southern Water Services Ltd

Sutton & East Surrey Water plc

Tendring Hundred Water Services Ltd

Thames Water Utilities Ltd

Three Valleys Water plc

Wessex Water Services Ltd

Yorkshire Water Services Ltd

Scottish Water

Annex 5

The questions which were used by the DTI to assess applicants to join the sharers list:

In this section, “Emergency Services” means those organisations who are permitted to carry blue flashing lights on their response vehicles, e.g., the Police, Fire and Ambulance services.

1. Name of the proposed user group and contact details for queries.
2. Organisation to which the proposed user group belongs (if different).
3. Describe in general the function and daily work of the proposed user group.
4. Briefly describe the function of the organisation to which the user group belongs (if different).
5. Number of mobile radio users in the organisation and of those, how many form the proposed user group?
6. Does the proposed user group respond to emergencies? If yes, give at least three examples, describing in particular how mobile communications are used. Include details of the frequency and type(s) of emergencies.
7. Does the proposed user group assist the emergency services in emergency situations? If yes, give at least three examples, describing in particular how mobile communications are used. Include details of the frequency and type(s) of emergencies.
8. Describe how the interaction in answers to 6 and 7 is carried out at present.
9. Could the required interaction during emergency situations be covered by the use of loaned Airwave terminals for a temporary period? If not, why?
10. Is the work of the proposed user group governed by a statutory obligation? If yes, give details and the ways in which the proposed user group meets the obligations in practice. If applicable, give details of contacts within Government departments that would be able to verify the user requirements and advise the DTI licensing section of the statutory requirements.
11. Where the proposed user group is a part of a larger organisation or community of radio users, explain how the non-emergency users will interact with the proposed user group, if it was on the Airwave network.
12. Is there any other information that DTI should be aware of, e.g. organisational changes?

13. Finally, each application must be accompanied by a declaration that the proposed sharer would adopt the approved Home Office/PITO security codes of practice that accord with the 'RESTRICTED' classification of Airwave, should they be accepted as an approved user. Approved users can only take up Airwave if they sign up to the approved Home Office/PITO security codes of practice. The DTI does not hold details of the Code of Practice but applicants are expected to familiarise themselves with the Code and its requirements.