



Award of available spectrum: 412-414 MHz Paired with 422-424 MHz

FCS response to the Ofcom consultation issued on 13 October 2005

Introduction

The Federation of Communication Services represents businesses delivering communications products and services by means of fixed, mobile and radio technologies. A list of our members may be found on the website www.fcs.org.uk

This response has been drafted on behalf of the 100 member companies that form the Business Radio Group within the Federation and who are either users or suppliers of business radio products and services. The Group has a keen interest in access to radio spectrum particularly in the VHF and UHF bands. Business Radio is a growing sector, driven by demands of health and safety legislation on UK business and requirements for business continuity. There is demand for access to new spectrum, particularly to implement digital technologies. The sector is characterised by many small business suppliers delivering service to the large corporate and SME sectors. Business radio is not a mobile telephony alternative.

We welcome the opportunity to respond to the consultation. Our comments are based on surveys among our members and feedback from the Ofcom and FCS Business Radio Future event held on 23 November 2005, details of which are on the website www.fcs.org.uk.

The consultation question

Ofcom asks a single question in the consultation:

Do stakeholders agree with these proposals for the award of this band or have any other comments on the contents of this document; in particular the way Ofcom envisages how a band manager might operate?

We have considered the issues associated with the needs of the business radio sector in this band and have reached the conclusion that we do not support Ofcom's proposal as it stands.

We have an alternative proposal for release of this spectrum and that is for the release to be as a minimum of three lots, such as 1.5 MHz, 300 kHz and 200 kHz, to take account of the diverse needs of the sector and to stimulate innovation.

Spectrum demand

The business radio sector has requirements for spectrum in London, for on-site, for Tetra technology and in areas where some of Band III may not be usable following the RRC conference in mid 2006. Access to the 412/414- 422/424 MHz band could be acceptable for each of these. The demand for spectrum is not from one organisation but several geographically diverse users. The Mason et al report in February 2005 (*Allocation options for selected bands 410-415 MHz and 420-425 MHz*) reporting on spectrum demand in the band said in section 3.3, "all parties envisaged using PMR/PAMR; no organisation is considering deploying national mobile/bb services".



A single national licence

Ofcom's proposal for selling off one national licence effectively excludes the participation of on-site users and SMEs and consequently the vast majority within the business radio sector, which comprises smaller players. Our members have said, "One licence in 410-424 MHz band sets up yet another monopoly, which has already failed twice before! It is designed only to appeal to big companies, by having too high a threshold for small players to enter." Competition in mobile services is even stiffer now than it was when the failed Dolphin service used the spectrum as there are now even more national network operators each very firmly entrenched in the market. We are not convinced by Ofcom's comments in section 4.15 of the consultation document that a single national licence would be more flexible than the previous national licence issued to Dolphin and so more successful. Although Ofcom intends to issue a technology neutral licence, the ECC has designated the band for narrowband digital PMR/PAMR; we would be interested to know the legal opinion on this.

A single national licence makes it too easy for a single entity to establish a monopoly position and block any competitors' system or technology deployment.

Band managers

Ofcom's own consultants, Mason, Analysis and Dot Econ in their February 2005 report said in section 3.7: "There is no proven demand for spectrum aggregated in a single national licence. Given the difficulties for small users to aggregate it is unlikely that an auction of national usage rights could deliver an efficient outcome without the participation of a band manager to act as an aggregator." Also, "The limited interest in the private sector interviewees in taking on the role of a band manager casts doubt over the immediate viability of this approach".

Of the 29 responses to the Spectrum Framework Implementation Plan on the allocation of this band only 3 respondents, Airwave, BBC and the Tetra MoU, suggested considering the band management route. This small sample does not constitute wide scale support for Ofcom's proposal.

Auction design

Auction design determines the outcome of any auction. The auction of a single national licence will go to the bidder with the deepest pockets and not necessarily those who would either use the spectrum at all or efficiently. This was graphically illustrated by the mock auction at the Business Radio Digital Future event. During the mock auction ten consortia put in bids for a block of "useful spectrum". While most consortia analysed the spectrum available and the merits of its usage, coming to a conclusion as to how much the spectrum was worth to them, the winning bidder merely put in a high bid to deny access to everyone else. The only outcome of such a scenario is increased fees to Ofcom and the Treasury and denial of access to those potential licensees that really need the spectrum.

The action of acquiring spectrum as a loss leader, hoarding it and bidding for the next release of spectrum to build up a dominating position, as Nextel has in the USA, will not necessarily lead to efficient spectrum use. This action could have the outcome of putting competitors out of business, such as the smaller companies and users in the business radio sector. As Ofcom has not defined the spectrum markets, there is unlikely to be any ex ante competition activity to prevent this situation. Smaller players, however aggregated, do not have the resources to stage a competition case.

The auction process when the winner pays the second bidder price encourages over bidding to win in the certain knowledge that he will never have to pay the full price.



It appears from the consultation document that auctioning a single licence would be a simpler activity for Ofcom, but this does not mean that it would be better for citizens and consumers who might be denied the business radio services that support their own businesses.

We would be interested to know what Ofcom's action would be should the reserve price for any part of the auction not be met.

Conclusion

We have illustrated that there is demand for this spectrum from a diverse set of players, but not we believe for a single band manager. We cannot see that Ofcom has a mandate to go ahead with a single national channel auction. It appears that this is a forced policy on an unwilling market.

We propose that in order to mitigate this situation and to ensure that there is access to the spectrum in the band for the diverse needs of the business radio sector; the release should be a minimum of three lots, such as 1.5 MHz, 300 KHz and 200 KHz, where smaller organisations might successfully gain access to the spectrum, and to stimulate innovation.