



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

Introduction

JRC is grateful for the opportunity to comment on the proposed process for adding permitted sharers to the Airwave Licence.

It should be noted that the ERC Decision governing 380-385 MHz paired with 390-395 MHz is a harmonisation decision to facilitate interworking between emergency services to provide coherent national and international emergency communications. **It is not an exclusive allocation decision**, i.e. it does not prevent placing other services in the band provided the essential objectives of the Decision are fulfilled.

At some point, Ofcom will want to review the rationale for imposing restrictions on the Airwave Licence under the Wireless Telegraphy Act. The original justification for imposing restrictions was to prevent Airwave competing unfairly against other mobile radio communications providers. The market is now reaching a stage of development where it is no longer necessary for the regulator to intervene. Airwave is providing a premium service to meet an essential requirement for public safety services not met by other providers. Users not requiring the public safety service only available through Airwave are using the multitude of lower cost services in the market. Even the blue light emergency services use other mobile communication bearers where the facilities, resilience or interoperability of the Airwave network are not essential.

Any concerns that if Airwave offers a service to wide a market, it will result in a degradation of service to the essential public safety users is a contractual matter between Airwave, PITO and other contracting parties. Quality of Service is not a matter which can reasonably be addressed through Airwave's Wireless Telegraphy Act Licence.

If Ofcom wishes to continue to impose arbitrary restrictions on the Airwave Licence, access should be granted to those organisations and people providing emergency services and discharging similar public safety functions. The governing principle should be safety of life and prevention of serious damage to property.

The release of the spectrum by NATO for use by 'emergency services' must be interpreted consistently not only across Europe,

but within the United Kingdom. Other European countries, and the UK in Northern Ireland, have permitted operational electricity staff to share radio systems operating in 380-400 MHz. If the UK permits this in Northern Ireland, there can be no impediment under the NATO agreement to prevent the UK allowing utilities sharing public safety networks in the band 380-385 MHz and 390-395 MHz in England, Wales or Scotland.

Detail

Section 1.2 states that all of the spectrum assigned to mmO2 for use by the Airwave Network is governed by the ERC Decision, and Section 3.2 of the Consultation states that “the ERC Decision restricted use of the frequencies to emergency services”. For the avoidance of doubt, the relevant portion of this Decision is repeated below:

“[ERC/DEC(96)01] Decision DECIDES

- 1. to designate the bands 380 - 385 MHz and 390 - 395 MHz as frequency bands within which the requirements of the Digital Land Mobile System be met;*
- 2. that for the purpose of this Decision a single harmonised digital land mobile standard for emergency services, adopted by ETSI, shall be used in the designated frequency bands;*
- 3. to designate the frequency bands 380-383 MHz and 390-393 MHz for use by a single harmonised digital land mobile system for emergency services as from 1 January 1998;*
- 4. to designate the whole or appropriate parts of the frequency bands 383-385 MHz and 393-395 MHz, if required, for use by a single harmonised digital land mobile system for emergency services as from 1 January 1998;”*

It should be noted that the emergency service requirement should be met “within” this band [DECIDES 1], and that DECIDES 4 speaks of designating “the whole or appropriate parts”. This does not prevent the UK permitting other services within the band, provided it does not conflict with the purpose of the Decision to provide harmonised spectrum for the Emergency Services, as has been done in Northern Ireland.

Notwithstanding the sections above, the intention of the ERC Decision has largely been undermined by the failure to adopt “a single harmonised digital land mobile standard for emergency services” as specified in DECIDES 2 and DECIDES 4. Because some European Administrations have not adopted the harmonised European Standard for Digital Mobile Radio, and have instead adopted a competitive incompatible standard, the potential benefits of the harmonisation measure are no longer achievable.

Even within the UK, consideration is being given by some emergency services to the adoption of a standard incompatible

with the Airwave Network, undermining the rationale for maintaining the sharers list.

It can thus be seen that the basis for the old DTI process was flawed, and Ofcom should be careful not to repeat the same error.

Consultation Questions:

Procedures and Criteria which Ofcom will apply for future applications

JRC supports the four guiding principles, subject to the comments below.

Point 4 which speaks of the requirement for instant connection with emergency services would benefit from further detailed consideration. Proposed users may want instant communications with the Emergency Services, but unless the Emergency Services are willing to accept access by the party concerned, it cannot occur.

There ought to be an over-riding fifth public interest principle, i.e. where government deems it to be in the public interest, additional sharers should be permitted. Examples might include where environmental concerns favour particular groups of users being given access to Airwave to avoid the need for the construction of additional radio infrastructure to the detriment to the environment; and where a nationally important requirement is most sensibly serviced by the Airwave network, even if it does not strictly meet the four other conditions.

The process needs to take account of changes in legislation since DTI devised the rules. In particular, the Civil Contingencies Bill places obligations on some parties to co-ordinate their activities with the emergency services. It would be foolish for one part of Government to place mandatory obligations on certain organisations but Ofcom to restrict their ability to fulfil those statutory obligations.

Timing and Frequency of future consultations.

The proposal to limit the frequency of amendments to once per year may aid administrative simplicity, but might be too rigid. If a demonstrably urgent case arises shortly after the consideration of a previous licence amendment, Ofcom would be faced with the choice between enforcing a delay on an application with safety significance, or breaking its own guidelines. In reality, the potential aspiring future sharers are already well known, and negotiating access rights is already a lengthy process. It may therefore be possible to address future applications on an ad hoc basis.

General

The Airwave network is unique in its functions and service level offered. As such, it carries a cost penalty compared to other commercial services, requires specific security commitments, and

limits access to certain functions. The attraction of the Airwave will always therefore be highly restricted. Ofcom should take this into account in framing this mechanism to ensure it is not unduly burdensome or complex.

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Managing Director, JRC Ltd, 7 May 2004