

Consultation doc is at <http://www.ofcom.org.uk/consult/condocs/ius/main.pdf>

### General comments.

We appreciate this initiative by Ofcom. The issue of innovation licenses in public sector spectrum is an idea that, in concept, has significant possibilities.

**Economics.** One immediate qualification to make is that innovators who decide to take advantage of such licenses are likely only to do so where a return on investment is possible within the “revocation notice period”. (The investment referred to here is the total expenditure incurred over the innovation period, not just the license cost). Therefore, it is suggested that the revocation notice period be set at license issue time between 1 and 5 years. This is to try to accommodate the ‘big picture’ economics of the radiocommunications application in relation to payback durations.

In addition to the latter aspect, it is possible that a successful application may actually establish itself as a valuable “asset” to the end user/s during the innovation period in terms of delivered services. Any capital investment made also by the end user should ideally, in some way, be factored into:

1. the revocation notice period, and
2. the decision to revoke the license when the public sector spectrum is released.

**License Termination.** It is not necessarily the case, of course, that a successful innovative application that proves popular with the end user or provides the end user with an “essential” service or that serves society as a whole, will subsequently be able to win required operational spectrum at auction. This might happen, for example, where the use of spectrum facilitates an application such as (e.g.) traffic management to minimise carbon footprint, when compared with an application where spectrum is re-sold in single-use packages of airtime (e.g. mobile phone minutes, texts, MB of data). It is suggested that mechanisms are explored that would permit the “innovative application” to subsequently remain in service where significant “societal” or “essential” services (i.e. providing substantive end-use benefit) are involved. If Ofcom currently does not have the power to permit this approach, then this might be a suitable basis for tabling an amendment in any review of the “Communications Act 2003”. Export only innovation would probably be served by the existing Non-Operational Development License, and the foregoing would therefore not apply.

**Revocation Period.** It is recognised that there are likely to be terms and conditions applied by Ofcom (or MoD) relating to the release of the licensed spectrum for use by the innovative application. Such terms and conditions should remain mainly technical for the purpose of managing potential interference to other radio spectrum users. However, in order to decide the length of the 1-5 years revocation notice period as earlier discussed, Ofcom should only require to consider the declared time to return on investment and the scale of investment involved.

**Efficient Use of Spectrum.** Requirements to ensure that the innovation license is actually used should be laid down so that the spectrum is used for the purpose stated in the license and the application rolled out within a reasonable period of time. If not, the license should be revoked and made available to other interested parties. However, where any reasonable progress in the roll out can be shown, the licensee should be able to retain the license – since, of course, it is not always possible to maintain planned timetables where innovative activities are concerned.

As a final comment, Intellect realises that the factors that we have asked be taken into account are relatively complex ones and may not necessarily lend themselves to simple solutions, some as suggested here. To help derive a set of arrangements that are ‘tuned for success’ we recommend having a workshop style stakeholder session to discuss such details once the responses to this consultation have all been received by Ofcom on 18<sup>th</sup> December 2008.

## Proposed approach

Question 1. Do you agree with our proposal to create a new innovation licence class?

A1: Yes

Question 2. Do you agree with our proposal to grant innovation licences on a first-come-first-served basis?

A2: Generally, Yes – however, some safeguard should be applied to ensure that a license is not obtained solely to prevent another party from acquiring access. Also, see under ‘General Discussion’ above.

## Licence conditions

Question 3. Do you agree with our proposal that innovation licences be service and technology neutral?

A3: Yes.

Question 4. Do you agree with our proposal that innovation licences should include a “non-interference-non protected” licence condition?

A4: No. As the license permits commercial, operational use, we feel that the service should be protected – as far as is reasonably practicable – from unwarranted interference. Choice of spectrum must take into account and any primary and secondary users in conjunction with the spectrum requirements of the innovative application.

Question 5. Do you agree with our proposal that, in general, innovation licences have an indefinite duration?

A5: Yes, but on the basis that we assume that something akin to Ofcom’s normal procedures for the periodic review of the operational T&D Licence spectrum (for example) will also be applied to Innovation-Licensed spectrum.

Question 6. Do you agree with our proposal that innovation licences have no initial period?

A6: Yes. Also, see under ‘General Discussion’ above.

Question 7. Do you agree with our proposal that innovation licences have a minimum notice period for variation or revocation on spectrum-management grounds of one year?

A7: Partially. The minimum notice period should be tailored to permit the application to show a reasonable return on investment over an appropriate period of time. e.g. an innovative use requiring a large capital investment may need three to five years to show an appropriate return, while smaller projects, with lower capital investment, may only require a year to show such a return. Projects making a greater innovative leap may be seen as high risk with investors looking for a larger return on investment than a project taking a smaller innovation step.

Question 8. Do you agree with our proposals for varying or revoking innovation licences during the minimum notice period?

A8: Yes – where a licensee operates outside the terms of the license or continually fails to maintain the application within the terms of the license. Temporary, accidental, breaches – say due to equipment failure - should be dealt with in a proportionate manner. However, given that innovative projects may suffer more setbacks than would an established application, some extra allowance should be made that accommodates equipment failures and the like.

Question 9. Do you agree with our proposal to allow only outright total transfers of innovation licences?

A9: No. If an innovative application is developed and a license is obtained for, say, the whole of UK, there is a possibility that the operation may be franchised. The whole UK license would need to be “visible” before the franchise could be viable, but the franchisee would operate a fraction of the whole.

The licensee might request Ofcom to sub-divide the license and issue a part to the franchise operator, ensuring that the franchise operator could have the license revoked without disturbing the operations of other franchisees.

Question 10. Do you agree with our proposal to charge a fixed fee of £2,000 per innovation licence per year?

A10: No. Whilst a minimum of £2k p.a. may be reasonable, the license fee should be in some way proportionate to the application, recognising that this may sometimes result in a higher charge. A UK national license is more valuable than a local license. However, the license cost should not be a significant fraction of the application's capital costs, so that the innovator is not deterred. If the license is the same cost irrespective of area covered, then there are likely to be more "whole UK" applications. An application that is expected to start in a local area and grow across a region or to the entire UK can be protected against the cost of a "whole UK" license by issuing a license that incurs further charges as the application is rolled out.