



**ProSiebenSat.1 Media AG**

**Submission**

**with regard to the RSPG Spectrum Policy Group Opinion on  
EU Spectrum Policy implications of the digital dividend**

**15 December 2006**

ProSiebenSat.1 Media AG is the leading commercial broadcasting group in Germany, Europe's largest broadcasting market. We currently operate 5 free-to-air television channels, distribute some of them to Austria and Switzerland and have just started with 2 pay TV channels on the German market. The group invested about 1 billion EUR in content in 2005 and has also launched a new Video on Demand Platform. Aside from already existing content supply for 3G networks, ProSiebenSat.1 Group currently broadcasts on the DMB platform of Mobiles Fernsehen Deutschland its news channel N24 and ProSiebenSat.1 Mobile, a dedicated channel for DMB, combining entertainment-oriented content from the Group's Free TV channels. Access to spectrum is vital for the distribution of our channels and the success of our new services.

As a prominent user of radio spectrum we welcome the opportunity to comment on the RSPG's opinion on the EU Spectrum Policy implications of the digital dividend and hope to add a fruitful contribution to the European discussion.

Although we fully endorse the Lisbon Agenda and the need for the development of a thriving European media and multimedia industry and acknowledge that spectrum allocation should allow an effective use of it, we do not see a need for European action to facilitate the introduction of "multimedia services".

The digital dividend will lead to greater flexibility and will allow distributing both classical and new services. However, with an ever increasing number of different services spectrum might become scarce again and we therefore recognise the need for an optimisation of the use of spectrum. We would like to comment the following points raised in the Opinion. Numbers refer to those in the Opinion.

➤ **1. Introduction - Member States' competency**

However, the decision on how to use the digital dividend should be taken on national level only as the availability of a spectrum dividend will vary between member states due to a different original situation, different markets, different switch-over dates and many other diverging circumstances. We therefore welcome the RSPG's approach not to attempt '*to impose any particular solution on individual Member States for the sake of uniformity*' (in line with Member States' competences under Article 151 of the EC Treaty. Through the concepts of allotment and spectrum mask, the GE-06 Agreement provides for the necessary flexibility in using the band. Only an allocation decision at national level can ensure the flexibility to adapt the spectrum allocation to the actual needs and potentially changing markets. And only



national allocation mechanisms will ensure that Member States will be able to make a choice as to which service is most valuable to its public and thus make a policy choice.

➤ **3. “Existing licenses”**

Secured validity of existing broadcasting licenses is key for any broadcaster who needs to be able to plan in advance and have legal certainty on this. Broadcasters often acquire transmission rights for top sports events or other top quality content with some years distance to the actual retransmission. Any withdrawal or change of licence conditions would prevent broadcasters from long-term acquisitions, would endanger their economic viability and seems to be legally unjustifiable anyway.

We therefore welcome that RSPG recognizes that it is important to respect the decision of some member states that have already indicated a preference for using the digital dividend for enhancing the broadcasting service and to take into account spectrum requirements associated with licenses for digital terrestrial television that have already been assigned (last paragraph in 3.).

➤ **4.3. “Cultural diversity and media pluralism”**

Spectrum is an important public good. The determination of “effective use” of spectrum and its allocation should therefore not be submitted to purely economic considerations, but should take public interests into due consideration. We therefore welcome the fact that RSPG emphasises in 4.3. that all attempts for optimization should *“not conflict with national and European content legislation aiming at promoting cultural diversity and media pluralism.”*

Linear, thus point-to-area-distributed broadcasting services including the optimized new services (HDTV, DVB-H etc) are much more relevant to opinion building and media pluralism than any other point-to-point service as they have a far greater reach and impact on society. This is one of the reasons why the future audiovisual media services directive (the revised television without frontiers directive) and national laws regulate linear and non-linear services in a different manner. In considering any attempts for an optimisation of the use of spectrum, it should be emphasised, that sufficient allocation of spectrum to both private and public broadcasting services allows for such fundamental freedoms such as freedom of expression, freedom to receive and disseminate information and ideas, media pluralism and cultural diversity. This alone already justifies, why the spectrum at stake should continue to be used only for broadcasting services.

The fact that not only public service broadcasters in the pure sense such as the members of the EBU but also private broadcasters such as the channels of the ProSiebenSat.1 Group often have to follow general interest objectives and fulfil certain obligations adds another argument. We refer to our position on the introduction of Multimedia Services in frequency bands used for broadcasting of 14.07.2006 for a more detailed explanation on this.

➤ **4.8. Technical constraints**

The technical constraints mentioned in 4.8. would not occur if other bands not allocated to the broadcasting service would be used for new multimedia



services, e.g. the bands allocated to the mobile service 2 GHz and 2.5 GHz and the bands at 1980-2010 and 2170-2200 MHz for satellite services. In any event, they should not be the basis for regulatory interventions on frequency bands 174-230 MHz and 470-862 MHz as today's constraints will be solved on technological level before a EU legislation could even be adopted.

➤ **4.10.2 Common Sub-band**

A common sub-band may seem feasible to some at the time of this discussion due to the known problems with using the 900 MHz band for return channel. Nevertheless, it should be questioned if these incompatibilities will last for an unlimited time, or if this is a problem that can be solved in the future. As technological progress cannot be foreseen for more but a limited time span, it seems inappropriate and inefficient to block major parts of the UHF spectrum because of present day technical limitations.

It should also be taken into consideration (as cited in last paragraph of 3.) that also existing DTT services (mostly television broadcasts) will face substantial problems with channels at the upper end of UHF band IV/V. Especially channels 59 and higher are often not within the frequency range of existing in-house amplifiers with regard to DTT reception with rooftop antennas. Thus, a re-planning of existing DTT channels favouring DVB-H over DVB-T will lead to an unfair financial burden for those citizens already using DTT as their means of reception and/or a loss in reach for broadcasters.

With regard to the RSPG's own findings from its 'Questionnaire on Digital Dividend' (Annex 1 of Draft RSPG Opinion, also cf. par 4.1) it seems questionable if a general assumption that the Digital Dividend will be needed for Mobile Broadcasting can be upheld. Member States must not be obliged to engage in Mobile Broadcasting if they, for example, rather wish to use the Digital Dividend to increase the number of DTT channels. A uniform EU-wide recommendation for one or two multiplexes in a defined sub-band does not seem to take into account these possibly different approaches of Member States.

➤ **4.11.1. Further allocation to fixed/mobile services should not affect broadcasting**

The aim of the optimization of the use of Spectrum as mentioned in 4.3., i.e. promoting and not distorting competition and maximising benefits can only be achieved if broadcasting services are not hindered by the optimization attempts. Broadcasting and the brands of existing TV channels attract viewers to other new services and platforms and will continue to be lighthouses and drivers for the development of new media markets. We therefore welcome that RSPG acknowledges that any further allocation to the fixed/mobile services in the entire UHF band at WRC-07 or WRC-10 should only be aimed at *"under conditions which ensure that the broadcasting service is not adversely impacted"*.

➤ **4.12. Coding/MPEG 4**

The RSPG and the Commission should take into consideration that a switch from the currently used MPEG2 coding to MPEG4 will impose a considerable



financial burden on those citizens who already receive their TV signals via DTT. In Germany alone, more than 1 million homes own one or more DTT receivers (as of 1 December 2006) – which would all become obsolete if coding was switched to MPEG4. With a minimum regard to receiver life cycles and to the consumers' budgets, a three to five year simulcast phase seems appropriate to phase out MPEG2 on DTT.

ProSiebenSat.1 Media AG would like to recall that in accordance with the results of the RRC-06 the broadcast bands should be used primarily for the introduction and development of new broadcasting or at least new linear services. If at all necessary, we would suggest restricting the definition of multimedia services to linear multimedia services or mobile broadcasting services.

Berlin, 14.07.2006

*We thank you for taking our comments and suggestions into consideration. Please do not hesitate to contact us for further information you might require.*

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