



ProSiebenSat.1 Media AG

Submission

**with regard to the RSPG Spectrum Policy Group Opinion (5) on
the Introduction of Multimedia Services in particular in the frequency bands
allocated to the broadcasting services
RSPG Draft – May 11th 2006**

14 July 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, will soon launch a new Video on Demand Platform and is distributing its content on mobile networks. We also distribute our programs via DTT and DMB. 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 introduction of multimedia services in the frequency bands allocated to broadcasting services 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.

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.

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.

To give an example, under German law, the two biggest channels are obliged to broadcast regional windows that have to be produced by independent producers although financed by the channel in question (§ 25 Interstate Treaty on Broadcasting (RStV)). Any broadcaster with more than 10 % or 20 % combined market share for a group has to reserve up to 260 min./week airtime to an independent third party to ensure media pluralism. And § 42 Interstate Treaty on Broadcasting (RStV) specifies that broadcasters have to allow Protestant and Catholic churches, as well as a Jewish congregation, to have reasonable airtime.

Broadcasters who have these kind of specific obligations therefore have special needs for spectrum. It is clear that these should be adequately reflected in spectrum policy and allocation during and after digital switchover.

But there are even more arguments why the digital dividend should be used for the enhancement of existing and development of new broadcasting services: Digitalisation will only be attractive to the public if it can offer an enhanced broadcasting experience through an enlarged choice of services on a range of receivers in any situation whether at home or mobile. Broadcasters will have to meet these expectations to convince the public to buy digital receivers. They can only be driving the digitisation through new digital services, enhanced quality of services (HDTV) and new greater choice and thus create economies of scale if adequate spectrum is available.

In our view this means that the broadcast bands mentioned in the opinion should continue to be allocated to broadcasting services as mentioned above and corresponding with the results of the RRC-06. The digital dividend of the digitalisation of spectrum currently allocated to broadcasting services should be used to enhance and enlarge broadcasting services.

The opinion states that the inclusion of point-to-point services in the use of that spectrum can lead to specific problems as mobile uplink transmissions in these bands “could not be notified to ITU using the spectrum mask concept proposed by Europe to the RRC and would require guard bands with television or sound broadcasting, hence make their coexistence and coordination difficult”. There is no reason for the creation of these difficulties. As stated in the Opinion under 4.6. other bands not allocated to the broadcasting service also offer the opportunity to provide 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.

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 quoted RSPG



Opinion on the spectrum dividend were it concludes, that Member States, given the diversity in needs and objectives, should be able to allocate any dividend to such services that best serve their demands.

Spectrum management and thus also spectrum allocation falls within the competency of the Member States. 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.

In our view, even in interference issues there is no need for European action as the coordination on spectrum management can clearly be arranged via the CEPT that even has a wider membership footprint than the EU and therefore seems more adapted to the need to find solutions for these problems.

The Opinion mentions that “reviewing current licenses” could facilitate the introduction of multimedia services and estimates in 4.9. that there might be a need for action at European level to “remove unnecessary constraints in current licenses”. ProSiebenSat.1 strongly opposes to this idea. 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. Apart from the fact that there seems to be no legal justification for a withdrawal or change of the existing licenses whether on national or European level, any such withdrawal or change of licence conditions would prevent broadcasters from long-term acquisitions and would endanger their economic viability.

ProSiebenSat.1 Media AG also does not see a need for the propositions the RSPG raises in 4.8. Especially the proposition for bands 174-230 MHz and 470-862 MHz is neither helpful nor would it be justified. If the proposed 7-8 MHz should be reserved for multimedia services that might be predominantly point-to-point services the distribution of DVB-T or DVB-H might be affected. In accordance with the results of the RRC-06 the broadcast bands shall 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.

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

Contact:
Els Hendrix, LL.M. (Bruges)
Rechtsanwältin
European Affairs Manager
ProSiebenSat.1 Media AG

T: +49 -(0)30/2090-2306
F: +49 -(0)30/2090-2321
M: +49 -(0)160/ 4798973
E: Els.Hendrix@ProSiebenSat1.de
www.ProSiebenSat1.com