

## Communications Consumer Panel Response to the Ofcom Consultation Document on the combined spectrum award and the section on Coverage issues at 800 MHz based on the study report of Stephen Temple

The Communications Consumer Panel welcomes the opportunity to respond to Ofcom's consultation on the forthcoming auction of 800 MHz and 2.6 GHz spectrum which offers the prospect of significant benefits to consumers and small businesses.

Alongside the rapid uptake of Smartphones, the Panel notes the increasing importance of mobile broadband to UK consumers using dongles and datacards. Nearly a fifth (17%) of UK households used PCs with mobile broadband at the beginning of 2011, and 7% of households have it as their only means of internet access<sup>1</sup>.

This is a critical moment, providing a unique opportunity to resolve the persistent and continuing problem of inadequate mobile coverage. Spectrum is a valuable resource which is infrequently released - the forthcoming auction presents an opportunity to address the fact that GSM coverage has largely stood still since the arrival of 3G - most coverage not-spots ten years ago are still not-spots today. For the first time in over 25 years significant spectrum is about to be released that is lower frequency than any that is currently deployed...800 MHz is a good solution for rural coverage and presents the opportunity, perhaps the only opportunity within the next decade, to correct the adverse coverage position.

In addressing the specific questions raised in the consultation, we would make the following overarching points:

- The Panel encourages Ofcom to keep consumer interests at the fore during its work, and recognise the significance of the SME sector to economic developments - particularly in the devolved nations, not unduly weighting its approach to either a revenue raising or an operational/technical perspective.
- The arrival of new spectrum and new technology should not cause a loss of focus on maintaining the standard of GSM coverage...it will remain everybody's mobile link to the emergency services at least over the next decade, and for many in areas of poor coverage it will be the only effective means of mobile communication.
- We do not believe that the current coverage on 2G meets the legitimate aspirations of consumers. The harms rightly described in the Consultation Document need to be addressed. Current 2G coverage is at its commercially economic limit and is unlikely to be significantly extended - and 3G and 4G services may not reach, and are certainly unlikely to extend significantly beyond, the current 2G footprint without some intervention to impose more stringent coverage conditions or to fund increased coverage in commercially unattractive areas. The current spectrum auction and re-pricing of existing spectrum allocations should be used to create an intervention to increase mobile coverage beyond the current 2G footprint.

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<sup>1</sup> [http://stakeholders.ofcom.org.uk/binaries/research/telecoms-research/bbspeeds2010/Mobile\\_BB\\_performance.pdf](http://stakeholders.ofcom.org.uk/binaries/research/telecoms-research/bbspeeds2010/Mobile_BB_performance.pdf)

- The Panel notes that the pricing of the back-haul is likely to heavily influence the economics of mobile broadband rural coverage. The Panel encourages Ofcom to undertake a piece of follow-up work to ensure a sustainable long-term pricing model by BT that does not disadvantage rural mobile users.
- The Panel would encourage Ofcom to co-ordinate the timing of the spectrum auction with its wider market review in order to fully inform the decisions made by stakeholders.
- Finally, the Panel commends the work Ofcom is undertaking to increase the availability of mobile coverage on the rail network. It encourages further efforts to accelerate the availability of reliable coverage on the rail network which would bring about benefits for both consumers and small businesses.

Question 6.1: Do you have any comments on the proposal to include in one of the 800 MHz licences an obligation to serve by the end of 2017 an area in which 95% of the UK population lives, while providing a sustained downlink speed of 2Mbps with a 90% probability of indoor reception? Do you think there is another way of specifying a coverage obligation that would be preferable?

### Consumer Panel Advice

1. The real value of a coverage obligation is best measured by the improvement it brings about at the core infrastructure level in the areas where the last 5% or so of the population live. This will be directly related to the number of new base stations with broadband back-haul that it creates. The proposal in the Consultation Document that involves no new base stations lacks ambition to seize this unique historic opportunity.
2. In the recent Parliamentary debate on this issue, a figure of 1400 new base stations at an approximate cost of £250m was mentioned as a means of achieving 98% coverage. This would require verification but we consider that a sum of money of at least this order is necessary to provide satisfactory coverage at this level. The sum required, although large, will be small in comparison with the overall revenue generated by the auction.
3. Ofcom might look flexibly on how best to deliver this quantitative improvement, it could impose a more stringent percentage of the population coverage obligation as a condition of one or more of the licences. Alternatively, Ofcom might retain a sum of money from the spectrum auction proceeds and run a reverse auction to select the mobile operator(s) to deliver the rural coverage up-grade. Where public money is used to provide additional access, the operators who successfully bid for this should be required to provide roaming for these territories.
4. The 'percentage of population' measurement is difficult to verify, however Ofcom needs to have a coverage definition that is easily understood and measurable. Therefore we cannot currently suggest an improvement on that provided in the condoc. However it should be noted that the user experience will vary depending on, for example, the number of users and traffic geographic patterns. Actual consumer experience may fall well short of that in the theoretical model.

## Interests of citizens and consumers

“Coverage” is one of the main attributes of a mobile infrastructure and one to which citizens and consumers attach a high importance. It has not significantly improved in the last ten years. The switch of consumer interest to mobile access to the internet will raise a whole new class of coverage issues around inadequate access speeds.

### Supporting Evidence

A pure market oriented approach to delivering the coverage that citizens and consumers need has proved inadequate. Basic voice coverage issues that existed 10 years ago still exist today, largely as a result of Mobile Operators switching their priorities to rolling out 3G. The speed of 3G roll out was disappointing, with coverage today still patchy in places where coverage maps paint a more rosy picture. This in part has occurred as mobile operators have been conflicted between investing in more capacity in the existing 3G coverage area and extending/improving that coverage. This has resulted in a worrying underlying trend of capacity (access speeds) improving at the expense of coverage shrinking.

Question 6.2: We would welcome views and evidence on the costs and benefits of imposing an additional coverage obligation focussed on particular geographical areas, and if such an obligation were to be imposed what might be the appropriate specification of geographic areas?

A coverage obligation at an average UK level discriminates against large parts of the devolved nations and the Panel would strongly recommend that Ofcom should additionally consider setting obligations for each of the devolved nations.

However, imposition of more stringent coverage obligations may reduce the price that MNOs are willing to pay for the auctioned spectrum, and Ofcom would have to negotiate a lower annual fee for the existing spectrum in exchange for increased coverage obligations on that spectrum. An alternative for Ofcom would be to ensure that a sum of money is retained from the spectrum auction and re-pricing, to provide a fund for subsidising increased coverage in commercially unattractive areas. We invite Ofcom to assess these alternatives, but we believe that some intervention to increase coverage is necessary at this opportunity. None of the £22bn raised by the 3G auction was used to provide improved coverage for consumers. We believe that, this time around, significant sums should be set aside from the windfall to the Treasury to provide coverage benefits to consumers and citizens.

Question 6.3: Do you have any comments or evidence on whether an additional obligation should be imposed to require coverage on specific roads?

See 6.4 below

Question 6.4: Do you have any comments on our proposal not to use the combined award to address existing not-spots?

### Consumer Panel Advice

1) Ofcom is to be congratulated on coming up with an imaginative new approach to addressing coverage not-spots. But this must be made to happen, if the opportunity of imposing a greater coverage obligation in the spectrum auction is not taken. Finance from the auction and relicensing of spectrum must be set aside on a scale that matches the scale of the problem (including poorly covered rail links).

2) The Consumer Panel supports the Ofcom approach whereby the coverage not-spots are addressed with the technology in use today. But it is important that any new base station sites brought about by this alternative mechanism have a provision for the later up-grading of those sites to also support 800 MHz LTE.

3) Whilst Ofcom, in general, needs to be technology-neutral there is a global trend for top end mobile phones to embrace all technologies but many low end mobile phones do not. GSM is probably the only universal technology found in all mobile phones and this needs to be reflected in Ofcom's approach to addressing mobile coverage not-spots certainly over the next few years.

### Interests of citizens and consumers

The coverage not-spots create significant harm to a large number of people both living in the coverage not-spots or passing through them. It must make sense for the relatively small incremental cost for the solution to these coverage not-spots to be within the framework of a road map that brings very fast "narrower band" relief but eventually brings the full mobile broadband coverage over a suitable time period.

### Supporting Evidence

Ofcom no doubt already has a considerable archive of mobile coverage complaints to justify the action it is proposing, and the consultation document sets out the harms to consumers and citizens in paragraph 6.4.

GSM coverage has largely stood still since the arrival of 3G; most coverage not-spots ten years ago are still not-spots today. The Panel remains extremely concerned about the mobile coverage available under 2G and 3G and strongly encourages Ofcom to explore what interventions could extend existing 2G as well as 3G/4G coverage. We welcome the anticipated workstream to explore solutions to existing voice not-spots and look forward to delivery of these proposals later in 2011.

We do not believe that the current coverage on 2G meets the legitimate aspirations of customers. The harms described in the Consultation Document as a result of poor or nonexistent coverage are legitimate and need to be addressed. In our consultations with mobile operators and others they have said that current 2G coverage is at its commercially economic limit and is unlikely to be significantly extended and that 3G and 4G services are unlikely to extend significantly beyond the current 2G footprint without some intervention to impose more stringent coverage conditions or to fund increased coverage in commercially unattractive areas.

We believe that it would be unacceptable if consumers who currently do not receive 2G coverage were to be prevented forever from receiving the benefits of mobile technology. In considering whether the policy is rural proof, the Panel encourages Ofcom to also consider the significant detriment to SMEs, including farms, in rural communities. Therefore, the current spectrum auction and re-pricing of existing spectrum allocations should be used to create an intervention to increase mobile coverage beyond the current 2G footprint.

Question 6.5: Do you have any comments on our proposal not to impose ‘use it or sell it’ obligations but to consider including an additional power to revoke during the initial term of the licences?

#### Consumer Panel Advice

The Consumer Panel suggests that there is an alternative to a “use it or sell it” option and we point to the housing market and the way long-standing empty properties are addressed. Here a local authority can impose a tenant on the owner of an empty property without removing the property rights of that owner. Thus a better approach might be to begin with the same “use it or...” trigger but the sanction is for Ofcom to find a rent paying sub-tenant for that idle spectrum.

#### Interests of citizens and consumers

There is no doubt that the performance of LTE networks can be considerably enhanced with wider radio channel widths and rural communities in particular would benefit with much improved access speeds.

#### Supporting Evidence

There are pockets of spectrum across many frequency bands in remote rural areas that are unused and likely to remain so. A mobile operator is unlikely to respond positively to the idea of their spectrum being used in these pockets by somebody else as there is always a fear that it might block off something the mobile operator might want to do in the future and the economic rent for that spectrum in rural areas is too low to overcome this reluctance.

Question 5.6: Given the measures we propose to take to ensure four holders of spectrum portfolios sufficient credible to provide higher speed data services, do you agree that it would not be appropriate or proportionate to introduce a regulated access condition into the mobile spectrum licences to be awarded in the combined award?

#### Consumer Panel Advice

In relation to Ofcom’s proposed measures to ensure four holders of spectrum portfolios that are sufficiently credible to provide higher speed data services, the Panel suggests that Ofcom should still take reserve powers now in the combined award to introduce a regulated access condition under the circumstances where the UK market is failing to deliver an effective choice of broadband mobile coverage and/or quality of data speed or coverage is balkanising to the detriment of citizens and consumers.

## Interests of citizens and consumers

Despite Ofcom's efforts to preserve four operators, it is impossible to predict the development of the market over the next 10 - 15 years. Ofcom cannot discharge its duties to citizens and consumers if they lack the regulatory tools in their toolbox at the time they are needed.

## Supporting Evidence

Competition at the network infrastructure level is trending in the wrong direction inasmuch as basic provision (2G) for the have-nots is being sacrificed for greatly increased data capacity for areas which are commercially attractive and already well-served. Whilst the measures Ofcom is proposing may lead to a helpful slowing down of this adverse trend, there is a high probability that Ofcom is winning the battles but losing the war. Ofcom may then have step in to redress competitive under-performance.

One of Ofcom's major difficulties is that its powers often do not match its duties. It must be in Ofcom's interest to take every opportunity open to it to acquire new tools in its regulatory toolbox and a regulated access condition is one such tool Ofcom will need. In which case it is fairer to the industry to make this explicit now. We do not believe that this will discourage investment or innovation and the evidence for this is the high level of data demand hitting the mobile phone networks, which will drive them to acquire and use all the internationally harmonised spectrum that they can lay their hands on. The alternative means of satisfying this rapidly rising demand through building more base stations would be more expensive.

The Consumer Panel would also like to comment on Ofcom's proposal to only impose a coverage obligation on one of the licences. This would mean that in geographically difficult areas, only one operator was available but also assumes that consumers do not travel into and out of these areas.

If this approach is to work at all, then it must be accompanied by the enablement of roaming throughout all such areas, with consumers having additional protection against unfair termination charges.

We would also make a more general point about roaming. The condoc is silent on the possibility of roaming, but the Panel would urge Ofcom to investigate the cost-effectiveness of using roaming as part of the solution for the areas of poor coverage. Enabling roaming could significantly reduce the number of base-stations required to provide coverage for the last 5% of the population.