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# The Convergence Group PLC

## Facsimile

To:  
Attn:  
From: Date: No of

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Pages:

Radlocommunlcatlons Agency  
Laurence Green  
Dave Happy  
May 9th 2002 **Fax No: 0207 211 0571 4**

Dear Laurence,

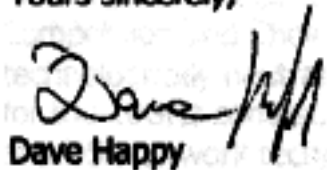
Subject:

### Government Invitation to Comment on the Cave Report

Please find attached our response. It is to be regretted that the kind of relationship we once enjoyed has been replaced with one with the RA in which (sadly) I would have to describe their actions as aggressive and hostile. As you know! I have 'done my bi~ to assist the RA in the past - so to see things sink so low has been terribly upsetting. Even the RA unit with whom I am dealing accept that our company was one of ttle pioneers in 40GHz. We feel abused, and, as you might expect since you know me, I have a full audit trial documented to support our company's position.

The Cave Report's, recommendations regarding th~ future management *of* 40GHz, are, in our opinion, flawed. We have concerns that the goals set out by the Government in Broadband Britain will not be facilitated were the report's 4QGHz recommendations to be implemented as it stands. This is a pity in an otherwise comprehensive report, on which we only have a few other observations. We trust that the RA will not rely on the publication *of* this report in an effort to justify the BFWA team's treatment *of* our company, and we await the outcome *of* the European Commission's investigation with great interest.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Dave Happy". The signature is written in a cursive style with a large, stylized initial "D".

**Dave Happy**  
**Vice President – Regulation & Planning**

## The Convergence GrOUD Pic's observations on the Cave ReDort

There is always a danger that some people, including the Radiocommunications Agency ('RA'), might seek to use the opportunity of this reports publication to seek to 'bury bad news.' Regrettably, our prime observation is that Professor Cave's work appears to have immediately been seized on by the RA to reclaim our spectrum allocation at 40GHz - to which we have a legitimate expectation. The justification that 'Cave said it was the right thing to do' has already surfaced... Such 'hijacking' of the report is regrettable, to say the least, when the report's ideals were so much more noble,

There was no mention in the report that the RA's conduct in the 40GHz band is under investigation by the European Commission, nor that the RA's discretion in the band is fettered. There is an extremely high probability that the RA will eventually be subject to Court proceedings. We submitted in confidence a detailed document to assist the compilation of this report - and we also raised this matter directly at a face-to-face meeting with the Secretary to the review. This is a matter of clear relevance to the future management of the spectrum, and the Commission's findings could have a significant impact on the RA/OFCOM as we move forwards. Failure to mention this factor leads, we believe, to recommendations in the report concerning 40GHz which we feel are fundamentally flawed. We would like to see this matter rectified! and will be copying the Commission on this response.

In our view, Cave is a solid report in most other areas. However, our overriding concern is that given the Government's aim of heading with all speed to a Broadband Britain, the report, whilst 'economically accurate' ignores harsh commercial reality in our sector. The UK's telecommunications sector is in a mess. Energis and ntl are in very public difficulties, the 28GHz auctions would not still be 'on-going' if they had been successful the first time around - and even the 10GHz beauty contest did not lead to mass take-up in the UK of BWFA.

That cornerstone of telecommunications policy, the 1991 White Paper Competition and Choice, underlined the Government's intent to be technologically neutral. This was re-iterated by the DTI in the Guidance notes for the 10GHz contest. By preventing us from deploying at 40GHz whilst fibre and DSL network technologies were able to continue to deploy apace, the RA has effectively crippled our business and denied broadband access to the population. Such conduct must be prevented in future, and why should the RA not be fully liable for the opportunity cost of its actions, if it is acting as a commercial undertaking? If a commercial undertaking makes the wrong

decisions, it goes out of business... If the RA makes a wrong decision, as it has in our case, the consequences are suffered by the customer, not the RA!

Our only other observation is that it appeared that Professor Cave had been subject to a degree of 'regulatory capture' by the RA. What we believe the UK needs most for the future management of the spectrum is to ensure it learns the right lessons from the past, so as to apply the best available remedies and build the best possible future. This requires balance.

It is certainly true that the RA has been at the forefront of spectrum management - but to say that they have a 'well deserved reputation as one of the most forward looking and progressive spectrum managers in the world,' lacks balance at a time when their conduct is under investigation by the Commission, 10GHz was not deployed, 28GHz was not a success, and the mobile auctions have been cited as a contributory factor to the malaise in the UK's telecoms sector.

Further, it is also known that RA executives had discussions with the then opposition prior to the 1997 elections to seek to ensure the safe passage of the new Wireless Telegraphy Act. Additional criticism has been levelled at them for their conduct in 2.4GHz for allowing a large UK Government contractor to try to set up a commercial business in the 2.46GHz band... even though the legislation implies that licence free spectrum bands may not be used for commercial purposes.

In our own case, the RA have prevented the development of Competition and Choice in the UK telecommunications market, contrary to Government policy. In addition, because we had intended to use our UK experience as the basis for our European expansion, they have prevented our deployment in Italy - where the DTI itself assisted us to get the Italian regulator to change its laws on 40GHz to allow access, and also in Greece. Jobs that could have been created have not - in fact job losses have been the result.

We are not saying that the RA does not do a good job in other areas - It does - just that all that glistens is not gold... We feel that basing the Secretary to the Review in the RA's offices, whilst logical, may have inadvertently contributed to an unconscious bias in favour of the RA. This, in turn, might have served to intimidate some of the respondents, who therefore have tempered their feedback - especially in cases where their businesses were completely dependent on spectrum. We accept this cannot be proven either way - but it should be considered.

Finally the report comes down emphatically in many areas in favour of Spectrum pricing. What benefit to the UK will there be if the BWA industries die, uplinkers move their operations offshore, mobile customers pay more for their 3G services - and Broadband Britain is delayed as a result? Data from the Commission shows that the UK's Broadband Access Penetration in June 2001 was one of the lowest in the EU. Broadband Britain and Spectrum

Pricing are not mutually compatible objectives, unless one can also have negative spectrum pricing. Why not?

Many issues that inhibit the use of wireless such as overspill into adjacent countries are not relevant to the 40GHz band due to its relatively short range

- the opportunity in the UK for 40GHz was not only to benefit broadband users but also for the UK development & manufacturing: this has been frustrated by the RA not taking advantage of this unique opportunity.

Considerable effort has been expended in order to preserve the use of 40.5-43.5GHz at the WRC by Europe against opposition from the US. This effort has been severely jeopardised by stopping its use in the UK which could have led to its universal and quick adoption.

Our company has devoted considerable time and resources to responding to the various consultations. We would be extremely disappointed if we thought that our message was not getting through...