

Response to Ofcom's 'Second consultation on coexistence of new services in the 800 MHz band with digital terrestrial television', April 2012.

The Threat to Existing Free-to-air Digital Terrestrial Television from Proposed New Mobile Services (Use of the 800MHz Spectrum Band)

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Context

1.1. On 21 February 2012 the British Government consolidated its policy decision on new uses of the 800MHz spectrum by 4G mobile providers, by announcing some compensation arrangements for the approximately 2.3 million free-to-air digital terrestrial television/DTT households now thought to be adversely affected by this change (DCMS, 2012). On 23 February the regulatory body, Ofcom, announced a consultation on how it proposed to go about implementing these decisions.

1.2. We welcome the opportunity of responding to this consultation. We also recognise that there have been some three years of discussions over the 'digital dividend' in the UK. These discussions have welcomed the opening up of the airwaves for use by new services, consequent upon the migration from analogue to digital television, a process to be completed in the UK in 2012. Ofcom consulted on this digital dividend and some of its implications in June 2009.

1.3. We also acknowledge, specifically, the legitimate interest of mobile providers and users, in improving and extending mobile internet access in Britain and throughout the world. Such access is intended for business, citizenship, information and leisure purposes.

1.4. However, in our view – and as a matter of principle – we think it is not legitimate to remove the present quiet enjoyment of free-to-air/Freeview digital television services from large numbers of current users in Britain. Households did not undergo the once-in-a-generation costs – and in some cases anxiety – of conversion to digital in the expectation that their new TV services would soon disappear. It is now estimated that the proposed changes in the use of 800 MHz frequencies will affect over two million households in the UK (Ofcom, 2012b: 4). From a citizen perspective, public service broadcasting that is universally available and free-at-the-point-of-use is vital for social cohesion and for the existence of a well-informed electorate, as well as for the provision of much valued recreational and entertainment services.

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2.1. We are, therefore especially concerned about some of the wording in the current Ofcom consultation. Until now Governments of all persuasions in Britain have accepted the principle that public service broadcasting should be available on a universal (or as near to universal as possible) basis. By contrast the February 2012 Ofcom document states: “..we do not consider that there is a legitimate expectation that a coverage level of 98.5% for DTT will be maintained” and that “..we do not

consider that our proposals give rise to any right to compensation for consumers” (Ofcom, 2012a: 13-14; Sections 4.14 and 4.20). In addition, Ofcom states:

We do not consider that our proposals give rise to any right to compensation on the part of providers of DTT services. In particular, we do not consider that such providers have any legitimate expectation as to the number of households who are capable of receiving DTT services. (Ofcom, 2012a: 14; Section 4.19)

2.3. There appears to be no concern about a possible diminution in the previously high level of availability of free-to-air television services (i.e. “universal access”). Although, by contrast, a statement on the Ofcom website - presenting the current consultation - notes the plan to “extend coverage to at least 98 per cent of the UK population” for mobile internet access on 4G mobiles.

2.4. There is a long historical ‘custom and practice’ understanding in Britain that public service broadcasters, including the BBC, are granted free use of the airwaves because of the vital national and civic service that they provide to all citizens. Moreover, since the 1920s large amounts of money have been invested by the BBC (on behalf of its licence fee-payers) and by other broadcasters in building a robust, nation-wide transmitter network. In the statements noted above Ofcom appears to reject or to be unaware of the significance of this custom and practice, and of the associated principle of universal or near universal availability. This appears to be the case despite the extensive research work undertaken on spectrum pricing and on the possible implications of this for public service broadcasting.

Conclusion

3.1. It is not, in our view, legitimate to seek to use and/or sell use of the same frequencies to two different sets of users at the same time (television and mobile communications), where the two uses are incompatible. This is so no matter what financial benefit there may be to the national Treasury in doing so. People are now more generally aware that the sale or auction of spectrum frequencies can be extremely lucrative for Governments, reaching into the scale of billions of pounds. So there is significant economic value here. However, in light of the broader social and cultural significance and value of public service broadcasting we suggest that the current proposals for use of the 800MHz band could be considered as a kind of mis-selling.

3.2. We do not think that the term ‘coexistence’ that Ofcom employs to describe the allocation of these 800MHz frequencies is realistic or acceptable. This is so because proposals from Government and from Ofcom include- even if unintentionally - unacceptable detriment to large numbers of existing users. We are aware of the proposal to create a new organisation (‘Mitco’). It is proposed that this organisation will exist for just one year following network roll-out, and will be managed by the companies successful in the spectrum auction (Ofcom, 2012a: 18). Mitco will issue those affected with digital filters or, where these do not work, it will encourage them to migrate to subscription-based cable or satellite platforms.

3.3. In their apparent ‘last resort’ reliance on pay-TV providers (though Freesat may also be an option) we repeat our concern at the apparent move away from the principle of universal access to public service broadcasting, free at the point of use for

those who choose to use roof-top aerials. This tradition of access has a long and popular history in Britain and, more generally, in Europe. We also note that the *proportion* of British households choosing to receive their television signals via subscription payment to cable or satellite has gone down significantly over the last half-decade. In 2004 over 70 per cent of digital households subscribed to pay TV. But by 2010 – as more households had converted to digital - this figure had reduced to 55 per cent (Ofcom: 2011: 97). Thus free-to-air services clearly continue to be highly valued in Britain.

3.4. We welcome attempts by Government and Ofcom to improve mobile internet access but urge a reconsideration of the particular 800MHz proposals advocated here. We hope that both Government and Ofcom will think again, bearing in mind the international frequency allocation process and the ongoing issue of detriment to the users of free-to-air digital terrestrial television. It is not too late for the international community and the European community to find more appropriate and more legally defensible solutions.

Sources

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