

## Ofcom Advisory Committee for Wales

### Consultation Response

#### Second consultation on assessment of future mobile competition and proposals for the award of 800 MHz and 2.6 GHz spectrum and related issues

The Ofcom Advisory Committee for Wales (ACW) welcomes the opportunity to respond to Ofcom's second consultation on the award of 800 MHz and 2.6 GHz spectrum.

The ACW broadly welcomes the direction of travel represented by the revised Consultation Document. In particular, we welcome the request by Ofcom for views on an option for a requirement of '*coverage of areas within which 95% of the population of each nation lives*'. If this option were adopted then it would satisfy one of the key proposals made in the ACW's response to the first ConDoc. We strongly urge that it should be so adopted. It is essential that the award of 800 MHz and 2.6 GHz spectrum is framed within the context of devolution and that Ofcom's auction processes reflect the different needs and priorities of Wales.

In its response to the first consultation, the ACW proposed solutions which promote competition where appropriate but safeguard areas in Wales where incipient market failure exists. We support the proposal in the revised consultation paper to include a more extensive coverage obligation of 98% of the UK population on at least one of the 800 MHz licences; and, as stated above, we urge the adoption of a requirement that 95% of Wales by population should also be covered.

However, the ACW does not believe that Ofcom has made sufficient revisions to its proposals to materially address other issues which the Committee raised. Specifically:

- Placing coverage obligations on two licence holders to ensure competition in rural areas.
- Nevertheless, should only one licence have that obligation, ensuring that this licence-holder cannot exploit its monopoly position in rural Wales.
- Allowing and encouraging roaming in more remote areas to meet whatever coverage obligation is determined.
- Imposing 'use it or lose it' clauses.

The ACW asks that our arguments for a regulatory environment supportive of improved infrastructure investment in Wales as presented in our response to the first consultation be considered again in the final Ofcom review of responses.

## Options presented in ConDoc Para.5.62

Approach A, requiring only the coverage of 98% of the UK population, would disadvantage Wales and would be most unlikely to satisfy the ACW's desire for at least 95% coverage of the Welsh population, itself a modest target. As shown in the Advisory Committee for Scotland's paper, the likely coverage in Wales from such a simple requirement would be in the range 84% to 94% (taking the ACS's comparative data for 2G and postulated 4G).

Any acceptance by Ofcom of such national disadvantage to Wales would not, in our view, be consistent with Ofcom's duties as given in the Draft Annual Plan 2012/13, paras 1.8 and 1.10

*'... we must have regard to the interests of persons in the different parts of the UK and of those living in rural and urban areas.'*

*'... priorities will support consumers across the UK. The areas of particular interest to the nations include: mobile not-spots; superfast broadband roll-out...'*

The ACW supports Approach B, with the proviso that coverage requirements (NOT *targets*) are set for each nation within the UK. This would satisfy one of the key proposals made in the ACW's response to the first ConDoc.

The ACW welcomes the UK Government's Mobile Infrastructure Project. However, there is no consensus on what coverage the fund of £150M would secure: estimates presented to the ACW by Ofcom researchers for the increase in coverage over the 2G provision in Wales (84%) vary from '*perhaps 90%*' to '*at least 95%*'. This is not a sufficient evidence base to protect citizens and consumers. The ACW believes that it is essential that the UK Government defines which not-spots will be solved by the MIP before the award of 800 MHz and 2.6 GHz licences; otherwise the licences would be awarded 'blind' with no definition of the coverage requirements in the nations and rural regions.

In summary, the ACW believes that irrespective of an enhanced UK-wide coverage obligation, the conditions for the 4G award must include provision for a Wales-only coverage obligation. The ACW believes that a UK-wide approach would seriously disadvantage rural areas (including much of Wales). As a minimum, the required coverage in Wales should be 95% as measured by population and 90% by area. We also consider that there should be an obligation to provide coverage on all A roads and railways.

## **Other Issues**

The revised ConDoc continues to suggest that coverage obligations might be imposed on only one licensee. The ACW contends that this would lead to an effective monopoly in substantial parts of Wales. The ACW advises that a minimum of two operators are subject to the coverage obligation.

The ACW remains concerned that mobile operators could be tempted to hoard their spectrum to prevent new entrants or other incumbents from entering the sector and providing effective competition. In our response to Ofcom's first consultation, we referred to our preference for a mechanism whereby if deployments do not commence within a specified time or if the proposed services are not available in the proposed geographical coverage areas and at the proposed coverage percentage, Ofcom could reserve the right to revoke licences and develop a prima facie case for market failure.

Alternatively, the ACW would like Ofcom to consider mandating wholesale interconnect access at an agreed regulated cost to prevent anti-competitive hoarding of spectrum. Ofcom's Draft Annual Plan 2012/13 states that Ofcom will continue to place pressure on BT to guarantee access to its infrastructure. The ACW would like unused spectrum to be subject to similar regulatory intervention to mandate its use, in recognition of its finite capacity and key role in future systems.

Such wholesale access would be granted in local areas (in Wales at County or sub-County level) to other private operators, government bodies, and local community and voluntary organisations.

Finally, the ACW has long campaigned for emergency call roaming and welcomes its introduction. Now that all the technical issues have been resolved, it is now appropriate that roaming should be mandatory in all rural areas for all operators, not only those with coverage obligations. Mandating roaming or mast sharing would enhance price competition and increase coverage.

**Ofcom ACW**

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