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DDR: Geographic Interleaved Awards

This submission represents the views of Public Voice, the leading voluntary sector body campaigning for citizens' interests in relation to communications. For several years we have constructively campaigned on behalf of the UK's Third Sector to achieve communications reform, and have supported improvements to the Communications Act 2003, the BBC's Charter Renewal, Phase One of the Second Public Service Broadcasting Review and the Digital Dividend Review, promoting the interests of British citizens, as a balance to the interests of the existing commercial media and communications lobbies.

Public Voice is pleased to submit its views to the DDR Review. This report raises some important issues which require serious consideration and open debate. We are pleased to respond to the consultation and view this is an important opportunity for us to help both Ofcom and Parliament shape the media landscape in the UK for many years.

SUBMISSION TO OFCOM: DIGITAL DIVIDEND REVIEW: GEOGRAPHIC INTERLEAVED AWARDS

- Public Voice believes communications regulation should at all times seek to protect, maintain and strengthen the provision of public service broadcasting content, platforms and partnerships. We believe that this review should be conducted through the prism of citizens' needs - their interests must be at the heart of all debates and the conclusions finally reached. **Public Voice regrets that Ofcom, following the initial DDR consultation has opted for a market-led approach to auctioning off spectrum. Public Voice argues against such an approach proposing that the spectrum auction needs to balance 'social value' with commerciality.**
- Ofcom is correct in identifying the potential demand for digital dividend spectrum for local television. However, Public Voice is disappointed that Ofcom "...considered arguments made to reserve spectrum exclusively for local television but decided against this. Among other things, we considered

that this might displace other high value uses for the spectrum and would reduce incentives for efficient spectrum use.” [1.4 p1]

- Since Ofcom began the DDR process in 2006, Public Voice has argued that some of the spectrum should be used to encourage social inclusion, community cohesion and community empowerment, as well as to strengthen existing platforms that give diverse perspectives and voices, and a platform for community sports, arts, culture and heritage. By deciding not to ‘ring-fence’ spectrum for services such as national and local television channels – which have strong public service, community and social agendas, the regulator is ultimately making it hard for smaller and/or not-for-profit providers of public service content to engage in the auction process. During the initial consultation we urged Ofcom to reconsider their approach and use an auction model in which licence awards are made not only on the basis of money – but with public purposes and social benefits taken into account.
- Under the Communications Act 2003, Ofcom’s primary duty is to further the interests of citizens and Public Voice regrets that a ‘highest bidder wins’ auction process, does not prioritise the citizens’ interests in the long term. In this DDR Consultation Ofcom has clearly asserted:

“Our objective for the DDR is to maximise the total value to society that using the digital dividend is likely to generate over time. It is expressly not our aim to raise revenue for the Exchequer.” [3.24 p17]

And we would again emphasise that ‘maximising total value’ balances social value along with pure economic worth.
- The UK media occupies a unique place in our nation’s infrastructure and has a demonstrable impact on all areas of social and individual life – whether it be the promotion of individual education, learning and skills; volunteering; community relations and community cohesion; social inclusion; citizenship and democratic value; arts, culture and heritage; linguistic diversity; crime reduction; environmental awareness and sustainability; foreign aid; health and social care; collaborative initiatives; equal opportunities and accessibility. Public Voice wants to – again – reiterate its evidence in the initial phase of the consultation that we estimate that an effectively regulated network of broadcasters and communicators that seeks to provide wider social value could save the economy £69.9 billion per year, or 0.71 billion per 1% of the population.
- Whilst we fully accept that there is a wide variety of potential uses for the interleaved spectrum apart from local TV – including Digital Terrestrial TV over a wide area, mobile TV, mobile broadband, wireless microphones and other PMSE applications, we cannot agree with Ofcom that *“the market is*

better placed than the regulator to decide the use of spectrum". Broadcasting can be regarded as a social good, yet without intervention on its own the market may choose to allocate precious space on a DTT platform to foreign-owned shopping channels, or to award spectrum to any organisation backed by funds, or lacking in any public service ethos. Public Voice recognises that market forces exist. We wish to emphasise we are not against competition per se. Indeed, in previous submissions we have argued that healthy competition between the public service broadcasters (for audiences, rather than revenue) can raise standards and benefit everyone. However, when Ofcom states that an auction beginning in summer 2009 "...would offer a fair opportunity for participation by the wide range of potential bidders", we are left to point out, with regret, that the high reserve price and predicted sheer expense of the cleared spectrum will preclude many small and new players, most notably not-for-profit organisations.

- Ofcom states that they "...acknowledge the importance of ensuring that the primary award delivers efficient outcomes based in current knowledge, and that these, in turn, deliver significant benefits to citizens and consumers in making the right choices." [4.24 p24] Public Voice warns that 'efficient outcomes' is not just the short term relief of an orderly-run auction process (as important as it is) – but that looking to the long-term, winners of the spectrum can demonstrate clear, unambiguous social benefits. We believe that Ofcom needs to regulate for 'technical efficiency' (ie: ensuring that the spectrum allows for clear transmissions without interference) – rather than prioritise the 'commercial efficiency' of the auction process.
- In our original response to Ofcom's initial Digital Dividend Consultation Public Voice argued that *"an auction of spectrum runs the risk of generating further social exclusion, polarisation of wealth and the creation of a 'digital underclass' "*, we do not demure from this conclusion. **However, since Ofcom intends to press ahead we insist that broadcasters and communicators who purchase spectrum enter into a contract to deliver a percentage of programming that is of broad social value; and that spectrum be used for communications that specifically serve the interests of citizens.**
- We agree with Ofcom that it is possible that more potential uses will emerge in future as technology changes and innovators create new products, and these may also have appreciable benefits. [4.22 p24]
- Public Voice recognises the critical importance of wireless microphones and other short range wireless devices for the production of live and recorded entertainment including the performing arts, broadcasting, news gathering,

film and independent production, corporate events, concerts, night venues and sports events. Events such as these – including Live 8, Proms in the Park and Sports Relief are often crucial in bringing the nation together, and can bring wide social gain. Access to interleaved spectrum is essential for the continued production of world-class entertainment. However, PMSE can also be used on a small scale for community fundraising events, bringing communities together. We welcome Ofcom's recognition of the PMSE sector's inability to compete in a spectrum auction and the need for a band manager to coordinate spectrum usage. However, we are concerned that Ofcom's guarantees to PMSE users for temporary access to interleaved analogue spectrum are unclear.

- Public Voice understands that there are 1152 television transmitters and relays across the UK each with spectrum that can serve local communities with small-scale television. Ofcom intends to appoint a band manager whose primary responsibility is to ensure radio microphones have spectrum. Radio microphones do not need to use the 'in-group' part of the spectrum that is necessary in each area for television reception. It would be a waste of broadcast friendly spectrum should 'in-group' spectrum be used in favour of radio microphones rather than community and small-scale TV. This scale of TV will flourish on community RSL and possibly long-term license models. We therefore urge Ofcom to ensure that the band-manager prioritises the use of the 'in-group' bands in each area for small scale TV, to devise terms of reference that balance TV access with radio microphone use and appoint the band manager to support community and small-scale TV, event TV, short-term and longer-term TV alongside PMSE demand.
- Public Voice shares Ofcom's concern that new DTT services in the interleaved spectrum could have an impact on the coverage of the existing DTT multiplexes following Digital Switch Off [5.27 p35] and it is important to strike the appropriate balance. It is Government policy that everybody who currently receives analogue PSB services should be able to receive these PSB channels also on DTT. Ofcom is correct in placing an obligation on the operators of the PSB DTT to match the estimated coverage of the existing analogue terrestrial networks (estimated as being 98.5% of UK households). Public Voice believes it is imperative that this obligation is fulfilled. Whilst there is no corresponding coverage for commercial DTT multiplexes (expected to be 90% of households at Switch Off), we are concerned at the impact of any loss of the planned coverage of these services could have on audiences. Universality is a key component of public service broadcasting, and it is imperative that citizens and audiences receive transmissions free of interference.

- Public Voice agrees with Ofcom that *“...the availability and coverage of interleaved spectrum will vary by transmission site and channel”*. [6.4 p44]
- Public Voice understands that *“...there are a number of options for obtaining rights to spectrum, besides acquiring them through a spectrum award. It would be possible to access spectrum through bilateral negotiation with the band manager.”* [6.4 p44] However, we’d like to reiterate that since the band manager’s primary responsibility is to ensure radio microphones have spectrum, we urge Ofcom to ensure that the band-manager prioritises the use of the ‘in-group’ bands in each area for small scale TV, to devise terms of reference that balance TV access with radio microphone use and appoint a band manager to support community and small-scale TV, event TV, short-term and longer-term TV alongside PMSE demand.
- We note that Ofcom has pledged that their approach to spectrum packaging is to *“reflect potential demand...we will award spectrum where there is a reasonable expectation of demand and in a way that reflects as possible the likely geographic pattern of demand.”* [6.13 p47] Public Voice, however acknowledges that not all communities are local – or even geographic, and that there are ‘communities of interest’, with shared concerns, issues or passions who may not easily fit into geographic patterns.
- Public Voice appreciates Ofcom’s need to decide how much information to release to bidders on other bidders and their bids. We agree that *“Bidders – and the public more generally – will want the process to be as transparent as possible to help ensure that it has been run fairly and that the reported outcome is correct.”* [7.61 p69] Of course any auction process must be run fairly - and seen to be run fairly - in the eyes of citizens, and the wider public, as well as industry participants. Public Voice would always favour as full transparency as possible. Bidders may need a level of information on others’ bids to inform their decision-making (including the identities of bidders) – but not at the expense of collusion, forming cartels or aggressive or anti-competitive action to undermine weaker bids, or new entrants. We welcome Ofcom’s commitment that a bidder’s deposit be forfeited in full or in part, if it breaches any of the auction activity rules including the submission of false or misleading information and collusive behaviour.
- We also note that Ofcom has declared that *“...If the licence remains unsold at the end of the auction, either through an absence of bids, or default, we will choose whatever course of action we consider appropriate at that time, in line with our statutory duties.”* [7.65 p70] **Public Voice reminds Ofcom that its primary duty as stated in the Communications Act is to further the interests of citizens. Therefore we suggest that the unsold spectrum is**

gifted exclusively to ‘public service’ use.

- We are not qualified to discuss Ofcom's proposals for technical licence conditions (TLC's) that would be appropriate for new DTT and other services in the interleaved spectrum; and the proposals for keeping news services under the threshold for international coordination. However in terms of non-technical licence conditions, Public Voice favours additional restrictions to ensure efficient spectrum use and to promote diverse, non-discriminatory and inclusive use, particularly on a geographic basis to prevent an increase in the digital divide and for services offered.
- Where the spectrum is used to operate a multiplex for carrying DTT services, Public Voice agrees with Ofcom's proposals to include ownership restrictions that replicate those in the Broadcasting Act relating to local authorities; political bodies; religious bodies and bodies exerting undue influence. [9.20 p78] It is not in the citizens' interest to have one political party own - and control - the airwaves, and control the content or messages that are distributed. Nor is it in the interests of community cohesion for one faith body to dominate the ownership and supply of spectrum. Public Voice points out that "bodies exerting undue influence" is, of course, highly subjective, but we concur that such restrictions may be necessary.
- Similarly, Public Voice endorses Ofcom's decision not to replicate the restrictions relating to broadcasting bodies, given the BBC's own role in Free to View Ltd.
- In regards to local authorities, we would argue that it is over-simplified for Ofcom to argue, *"...explicit support through direct funding for services that can provide broader social value is more transparent, and can achieve a better outcome than reserving spectrum for those services."* [9.21 p79] Not only do voters deserve to know how their taxes are spent, but both citizens and audiences deserve to know who has funded the programmes and content they access. Financial support from local authorities— followed by the threat (whether implicit or explicit) of withdrawal of funds – could leave a community or local media outlet unable to report objectively. We agree with Ofcom, *"...there must be no influence exerted on the multiplex owner which may serve political or other ends. Limited financial assistance in the form of a loan or grant, may be acceptable provided it does not result in the exertion of influence which is adverse to the public interest."* [9.22 p79]
- Historically consumers and citizens have benefited from the existence of interoperability arrangements – and we would encourage Ofcom to facilitate this.

- Public Voice has no problem with Ofcom's offering licences with an indefinite duration for the spectrum [9.40 p84] since we agree that the retention of powers to revoke on spectrum management grounds provides a mechanism allowing regulatory intervention if this is justified. Likewise Public Voice does not object if, during the initial term, the licence may be revoked for non-payment of the licence fee; or if there has been a breach of the terms of the licence; or if it appears to Ofcom to be requisite or necessary or expedient to do so in the interests of national security etc.
- Public Voice also agrees with Ofcom that they should include a standard condition in the licences for the DDR interleaved spectrum to require licensees to provide the regulator with general information regarding their equipment and use of frequencies, or the roll-out of their network. It seems highly sensible for Ofcom to be able to compare spectrum usage and identify unused spectrum in a meaningful way.
- We note that Ofcom is not currently planning on including roll-out obligations or 'use-it-or-lose-it' conditions. Whilst we accept that new technologies can constantly be developed which may affect the purchaser's business plan, it is not in the citizens' interests for commercial bodies outbidding competitors at auction, with every intention to spectrum 'hoard'. Award winners must not be allowed to act anti-competitively or 'squat' on spectrum indefinitely.
- We note that Ofcom has stated that *'the first step in promoting competition and efficiency in the geographic interleaved awards should be through the design of the spectrum award'*. [10.8 p91] It also follows that the auction design and packaging, ideally, should help to promote a market structure which could enable entries by new operators and by reducing possible asymmetries between bidders which might unduly impact upon their ability to reflect their demand for spectrum. However, in terms of specifics, we resist the temptation to pronounce on the four variants of Ofcom's proposed simultaneous, multiple-round ascending auction, or discuss the merits of Ofcom's proposed auction design - namely the transparency and simplicity of a Sotheby's style auction (with the auction run over a number of bidding rounds and the price rising until there is only one bidder left – the winner); or the ability for the combinatorial clock auction to address aggregation risk more effectively. **Rather we point out the vital importance of securing a diversity of spectrum ownership (without unduly constraining spectrum use) and the importance of keeping the deposit/reserve price low to ensure the auction is seen to be run in the interests of 'maximising the total value [of DDR]...not to raise revenue.'**

- Promoting competition through the use of spectrum is important as consumers may benefit from lower prices. [10.14 p92] Yet promoting efficient use of spectrum is also important to citizens – although Public Voice notes that technical efficiency and commercial efficiency may not be contiguous. Public Voice agrees with Ofcom that *“inefficient spectrum use could include a service provider not fully using all of the spectrum they have acquired and not trading any leftover spectrum with others who could make better use of it.”* [10.16 p92]
- Public Voice believes that Community Media, both UK-wide and local, is key to drawing out the diversity and range of voices, cultures and views represented across our communities, and acting as a unique feed of content and diversity into mainstream broadcasters. Ofcom should be working to strengthen content creation amongst the most disadvantaged, disenfranchised and socially-excluded communities, in celebrating and enabling community empowerment, but also crucially in assisting the networks, platforms, partnerships and stakeholders to enable distribution for this content. **Public Voice believes that the emergence of a strong, independent and non-commercial community media sector is a policy goal, and that “community media” means not only radio but also television and converged platforms, and that these may be at local, regional, national and UK-wide levels. We regret that the auction may do nothing to further these goals, and may leave community media disenfranchised.**