

**Ofcom Advisory Committee for Wales (ACW)**  
**Response to the Ofcom Digital Dividend Review (DDR) Consultation**  
**Detailed award design: 550-630MHz and 790-854MHz**  
**‘Cleared Award’**

**Introduction**

ACW members were given presentations on the DDR consultation at their meetings in Cardiff; representatives of the ACW also attended internal Ofcom meetings at Riverside House; and individual members attended public meetings within Wales organised by the Ofcom DDR team. The ACW have discussed issues relating to the DDR consultation at a number of its formal meetings during 2007 and 2008.

**Key Issues and responses to the consultation**

The ACW view is offered in response to Question 1; however it naturally impinges on several of the more detailed questions.

*Question 1: This executive summary sets out our proposals for the Digital Dividend Cleared Award. Do you agree with these proposals?*

1. **Background**

The ACW does not believe that Ofcom has dealt adequately with its concerns expressed in response to the preliminary consultation. In particular, the ACW reiterates that:

*Members are not convinced that a market-led approach is the only option for the efficient exploitation of the spectrum released at switch over. The economic conditions in many parts of Wales, particularly in the rural areas, suggest that regulatory intervention will be the only effective way to ensure full utilisation of released spectrum in a way that provides benefits for citizens and consumers in Wales...*

*Members are concerned that the packages proposed for the cleared spectrum would be auctioned exclusively on a UK wide basis. One possible consequence of this for Wales would be a version of spectrum hoarding, in which successful bidders would develop services in the more commercially attractive geographic areas of the UK but not in other more rural areas, including Wales...*

*The ACW members are particularly concerned, in relation to Wales, about the prospect of market failure in rural areas and about spectrum hoarding by successful bidders, which could well be large corporations not based in Wales. Members have noted that the proposed spectrum licences, obtained by auction, would not include 'use it or lose it' clauses. In their opinion, large companies could buy up and hold on to spectrum capacity, effectively stifling the market and potential spectrum trading...*

*Members suggest that the management of DDR cannot be separated from debate about the future development of the Universal Service Order (USO) for the provision of telecommunications services in the UK. Members are keen to see the USO extended to cover a minimum level of universal broadband provision in future. Members regret that Ofcom suggests that a market led approach is the only option in relation to the DDR.*

## 2. Access and Inclusion

The ACW notes that the more detailed market research undertaken by Ofcom demonstrates a public recognition of Broader Social Value and that improved provision of standard tv, mobile phone and broadband, including wireless networking, was seen as having both personal and BSV.

The ACW welcomes the Access and Inclusion project initiated by Ofcom and the opportunity already afforded to the ACW to offer evidence of under provision of basic services in Wales, especially in rural areas, and evidence that there are significant areas suffering multiple deprivation. There is no evidence that a further auction similar to those of the past 10 years would result in improved services in these areas.

The ACW believes that the auction should include sufficient 'hold-back' spectrum that a revised process could be initiated following the completion of the Ofcom study into Access and Inclusion.

## 3. Universal Service Obligation

The ACW notes that '...At present, the nature and content of further action at EU level is unclear. The European Commission has said that it plans to set out a regulatory road map on the digital dividend in late 2008. Any Commission proposals are likely to be influenced by the outcome of discussions in the European Parliament and Council where the issue of the Digital Dividend is currently being addressed.'

The ACW also notes that the European Commission is considering changes to the USO. The ACW urges Ofcom to support inclusion of Broadband (and a suitable definition thereof to support streaming bidirectional video) within the EC review.

The ACW believes that the auction should include sufficient 'hold-back' spectrum that a revised process could be initiated following the completion of the EC review of the USO.

## 4. Geographic scope

The ACW notes that Ofcom proposes to award the spectrum on a UK-wide basis.

The ACW believes that previous experience shows that it is likely that services will be rolled out in major population centres only, whilst being unused in other areas. The ACW is not convinced by the argument that the market should decide the applications and value of the spectrum but the regulator should determine the geographical aggregation. If the market is to be trusted to value the spectrum then it should be trusted to perform any aggregation. The benefit of this approach is that value will be determined on a regional basis and low-value services could be supported in multiply deprived areas.

The ACW believes that the auction should be designed so as to encourage use of the spectrum in all areas of the UK, including rural and other multiply-deprived areas. In particular, at least 6 channels should be auctioned for each nation including Wales (and possibly each English region) within the UK. The auction of these channels should be designed to permit geographical aggregation.

5. Use it or lose it

The ACW notes that Ofcom does not intend to include a ‘use it or lose it’ clause. The key arguments appear to be that ‘... It may in practice be difficult to define and so detect where spectrum is used or not... spectrum owners may in any case be able to find ways of circumventing... ‘ These reasons represent a simple derogation of duty and cannot be accepted as valid for not protecting the spectrum and the citizen.

The ACW also notes that Ofcom have rejected any roll-out obligation. The purpose of this would be ‘... to ensure that coverage is widespread across the UK, even in areas which may not be commercially attractive, in order to ensure both that spectrum is utilised and that citizens in these areas receive benefits... if entry still occurs, the remedy forces a cross subsidy which is paid for by other consumers, thus distorting the markets concerned.’

The ACW believes that it is the use of all-UK licenses which leads to questions of regional cross-subsidy. A true allocation of benefits and costs across the regions would be best served by offering at least some regional licenses. In those circumstances, a roll-out obligation would be appropriate and workable.

**ACW**  
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