

**Response by Cable & Wireless Isle of Man Limited to the Consultation paper on  
Options for Managing Radio frequency spectrum**

Cable & Wireless Isle of Man Limited ("C&WIoM") welcomes the opportunity to respond to the Consultation paper on Options for Managing the Radio Frequency Spectrum ("the Consultation"), issued by the Communications Commission ("the Commission") on the 26 September 2011.

**Consultation Question 1a. Do you agree with this assessment of the optimal spectrum strategy for the Isle of Man?**

The Commission has identified three possible policy options for maximising the benefits of spectrum use for business and consumers on the Isle of Man, namely: maximising competition; maximising revenues or maximising investment in network capacity. C&WIoM agrees with the Commission that the first of these options, whilst appearing to be attractive may not be realistic given the combination of a limited customer base and the geographical and topographical challenges of operating a mobile network on the Isle of Man. Similarly, a policy of maximising revenues through the use of an auction process for telecommunications and/or spectrum licences is unlikely to be feasible in such a small market as ultimately the costs associated with obtaining licences through such a process will have to be borne by a very limited customer base.

The third option, of maximising investment in communications infrastructure and services, therefore appears to be the most appropriate option for the Isle of Man. It will be important for the Commission to ensure that the operators of the networks are fully involved and consulted before any decisions are made in terms of realistic timetables and milestones for network investment.

**Consultation Question 1b. Do you believe, given its population and geography, that the Isle of Man could sustain more network-based competition – in particular, a greater number of mobile operators, given that spectrum is available to support this?**

No, C&WIoM believes that a population of 85-88,000 can only economically sustain two network-based mobile operators given the level of investment needed and the small customer base over which the costs of that investment can be recovered. An investment of around £15m to £20m is needed to develop an effective island wide GSM Cellular network. Both C&WIoM and Manx Telecom (MT) have indicated that they will invest in 4G LTE networks, these investments are likely to commence between 2013 and 2014, although investment in test network is likely to be earlier.

Placing limits on the number of network-based operators need not translate into limiting the choice for customers as it does not rule out the possibility of allowing mobile virtual network operators (MVNOs) entering the market and offering services using the infrastructure of existing mobile network operators (MNOs).

**Consultation Question 2. Do you agree that the Commission should award Telecommunications Act or Broadcasting Act licences for commercial radio spectrum use through comparative selection procedures? It would be helpful if you can give reasons and provide us with any evidence for your answer.**

C&WIoM agrees that the Commission should award such licences using a comparative selection process. When compared with the alternative allocation methods as mentioned above, and given the nature and size of the Isle of Man market, it is the fairest and most appropriate way for ensuring all operators are treated equally, to enable them to compete in the market and ensure that consumers are provided the best service.

By its nature a comparative selection process requires detailed submissions by all operators outlining the reasons for requiring spectrum use. Comparative selection vets the operator and ensures that its agenda is in line with the best interests of the island, including an ongoing commitment to re-invest into appropriate telecoms infrastructure.

The Commission should be facilitating competition which generates sustainable communications and networks for customers. A first come first served method makes no objective assessment of an operator and their ongoing commitment to invest in telecoms infrastructure and intentions for spectrum use in relation to the island community. It also makes no attempt to pro-actively monitor allocation of a potentially scarce resource.

Whilst auctions may in the short to medium term provide revenue to the island, the costs incurred by operators to “win” an auction will ultimately need to be recovered from customers. This may be challenging in a small island such as the Isle of Man and could mean customers end up having to pay higher prices than if a comparative selection process had been used. In addition, a “pure” auction process whereby licences are allocated solely on the basis of the value of the highest bids, with no conditions made with respect to other factors such as quality of service, coverage etc., could run the risk of bringing down the quality of the Isle of Man telecoms sector and indeed other broadcast channels.

‘First come first served’ or auctions do not actually seek to control spectrum allocation on the basis of merit, intentions or agenda.

If the Commission does decide to adopt a first-come first-served allocation method for any categories of frequency – such as fixed wireless access as suggested in Table 2 – then it should be prepared to insert use it or lose it clauses into the terms of spectrum issue to avoid spectrum hoarding.

**Consultation Question 3. Do you agree that the Commission should award Telecommunications Act test and development/trial licences on a first-come, first-served basis? Do you agree that commercial trials could be allowed in limited circumstances? It would be helpful if you can give reasons and provide us with any evidence for your answer.**

C&WIoM believes that test/trial licences could be awarded on a first come first served basis on the proviso that they are only used as per Ofcom guidelines.<sup>1</sup> This would include ensuring that any trial licences are time limited, which would also help to ensure that spectrum is not hoarded. Given that Ofcom already has a clear, transparent and proven method for issuing and controlling the use of trial licences – and remains the body responsible for issuing Wireless Telegraphy Licences in the Isle of Man - we believe it is important for the Isle of Man to continue to adhere to the Ofcom process for trial licences. As such we do not believe that any trial licences should be used for commercial gain, however limited.

**Consultation Question 4. Should commitments made by bidders in the course of a comparative selection process be included as mandatory conditions in the relevant Telecommunications Act or Broadcasting Act licence? It would be helpful if you can give reasons and provide us with any evidence for your answer.**

Any commitments made by an operator in a submission during a comparative selection process should be made binding on the operator if spectrum is awarded, otherwise there will be incentives on operators to make unrealistic or unattainable commitments in order to get a licence, knowing that they will not be held to such commitments.

C&WIoM would like the mandatory conditions put on any operators awarded spectrum to be publicly available after the process had completed. This would be best achieved by the inclusion of explicit licence conditions within the Telecommunications Act or Broadcasting Act licence, given that all such operating licences should be publicly available and published on the Commission's website. This would encourage an appropriate level of transparency to ensure operators remain accountable and the public are aware of their obligations relating to spectrum allocation.

Given that Ofcom will be issuing the corresponding Wireless Telegraphy Act spectrum licences to operators, it may be necessary for the Commission to request that Ofcom also make any such conditions part of the spectrum licences too. We would welcome clarification on this point from the Commission.

**Consultation Question 5. Do you agree that spectrum trading in the Isle of Man should not be permitted at this time? Do you agree with the proposal to consider spectrum reassignments on a case-by-case basis? It would be helpful if you can give reasons and provide us with any evidence for your answer.**

Yes, we agree that Isle of Man spectrum should not be tradeable at this time. Spectrum is a scarce resource that needs to be carefully managed by a central diligent body and this is especially important in the context of a small market such as the Isle of Man where even relatively small changes in spectrum allocations could have a major impact on the competitive environment.

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<sup>1</sup> <http://licensing.ofcom.org.uk/radiocommunication-licences/non-operational-tech-licence/>

Ofcom has very tight control on spectrum trading and only allows it in exceptional circumstances<sup>2</sup>. We do not feel the Isle of Man should take a different approach.

In the Isle of Man telecoms market where there are a limited number of operators, we feel that any re-assignments of spectrum is more effectively done through a clear and transparent process led by the Commission. Operators could formally request the Commission to consider re-assignment of spectrum between operators on a case by case basis, which could also cover specific circumstances such as the merger or acquisition scenario mentioned in the Consultation.

C&WIoM agrees that this would be best covered by including a specific licence condition in all Telecommunication Act and Broadcasting Act licences to the effect that the Commission's express permission is required for any re-assignments of spectrum.

**Consultation Question 6. Do you agree that service neutrality should be applied only in bands which are harmonised at EU level, and for trial licences? It would be helpful if you can give reasons and provide us with any evidence for your answer.**

C&WIoM supports the concept of service neutrality, which would allow operators to offer any communication services over their allocated spectrum. This would offer maximum flexibility and be consistent with the current Telecommunications Act licences held by C&WIoM (and MT), which allows the provision of communication services of any description.

**Consultation Question 7. Do you agree with the proposal to include use-it-or-lose-it clauses in commercial licences? It would be helpful if you can give reasons and provide us with any evidence for your answer.**

We consider inclusion of use it or lose it clauses for allocations of commercial spectrum licences to be reasonable so long as sufficient period of time is allowed for planning, installation development and launch of services.

The length of time restrictions inserted into any use it or lose it clause, particularly in a comparative selection process should be aligned with the timescales stated in the operator's original application.

As an operator looking to constantly innovate and develop our products, as stated above we would support any move by the Commission which would allow us to provide a broad range of services within a spectrum band.

This would allow for greater flexibility and enable us to improve and alter business plans to best suit the island and enable us to continue using spectrum bands without the need for further application to the Commission.

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<sup>2</sup> <http://stakeholders.ofcom.org.uk/spectrum/spectrum-trading/policy/>

Use it or lose it clauses are fair but we would welcome the above flexibility being built into them so we could use different technology and services over a spectrum band without being in breach of any use it or lose it clauses.

**Consultation Question 8. Do you agree that licence duration should reflect the factors listed above, and should be decided on a sector-by-sector basis? What other factors should the Commission take into account in setting licence duration? It would be helpful if you can give reasons and provide us with any evidence for your answer.**

C&WIoM is not clear whether the reference to licence duration is to the Telecommunications Act - that is, the operating - licence or the Wireless Telegraphy Act – that is, the spectrum – licence. However, we agree with the Commission that both licences need to be coterminous and considering the capital investment involved in establishing a mobile network, coupled with significant ongoing Operational Expenditure and further Capital Investment the Licence Duration should be for a minimum of 15 years. The economics of investing capital infrastructure in an island with a population unlikely to grow beyond 100,000 mean that there should be no charges associated with such a licence.

C&WIoM would accept that where a technology becomes redundant - and over time this might apply to Cellular 2G technology - licence holders should be sufficiently flexible to forfeit this spectrum if they cannot demonstrate that they will be using the spectrum to provide other services.

**Consultation Question 9. Do you agree with the Commission's proposed policy on licence revocation? If not, what alternative policy should be adopted? It would be helpful if you can give reasons and provide us with any evidence for your answer.**

C&WIoM believes that the Commission would only have the powers to revoke the relevant Telecommunications Act or Broadcasting Act licence, as opposed to the Wireless Telegraphy Act spectrum licences, which could only be revoked by Ofcom. Of course, both licences would be required to offer a service, so the revocation of one licence would effectively amount to the revocation of both licences insofar as the provision of any services requiring radio spectrum was concerned. However, we are responding to this question on the basis that it is referring to the Commission's powers of revocation only, namely to the Telecommunications Act or Broadcasting Act licence.

We agree that in certain circumstances, licences should be revocable if conditions of the licence are not met. The option to revoke licences must however be carefully defined so as to be fair, transparent and proportionate and operators should be given adequate opportunity to amend any breaches before revocation is carried out. Whilst we accept and agree the Commission is keen to discourage 'spectrum hoarding' through its ability to revoke licences, this should not come at the expense of the licensee and the investments they are making in technology and infrastructure which are wholly reliant on the long term prospect of its spectrum allocation.

Taking each proposed condition for revocation mentioned in the consultation we respond as follows:

Grounds for revocation:

i. Non payment of fees

The ultimate sanction for non payment of fees should be revocation, but a reasonable timescale must be given and any right to revoke the licence must be only in respect to failure to pay undisputed sums. Any sums in dispute should be resolved in line with a clear dispute process. Whilst sums are being withheld pending resolution of a dispute between a licensee and the Commission, this should not trigger a right of revocation.

C&WIoM assumes that Ofcom will continue to be responsible for the issuing of the Wireless Telegraphy Act spectrum licences, which will have their own payment terms. Any non-payment of fees to Ofcom should be solely a matter for Ofcom to deal with, rather than the Commission.

ii. 'Use it or lose it'

The effectiveness and fairness of revocation for 'use it or lose it' clauses, will depend on the individual circumstances and intentions of each licensee.

*Comparative Selection*

This is especially relevant to any allocation of spectrum through comparative selection process, where the individual aspirations of a potential licensee will be qualified and scrutinised prior to allocation. In principle we support the idea that non compliance of 'use it or lose it' should ultimately lead to revocation. However the timeline and circumstances as to why spectrum is not being used by a licensee is critical. Revocation under this condition must be judged against the intentions and promises originally made by the licensee during the comparative selection process.

Where a licensee has promised for instance to install infrastructure in order to use its spectrum allocation within 2 years, it would be unfair if prior to two years the licence was revoked for failing to use the spectrum. Similarly it may be that to revoke the licence immediately on two years having passed and spectrum still not being used would be too severe. Large scale investment projects do not always finish on time so some leniency should perhaps be built into any time limited revocation clause and possibly an option to extend for a limited period pending completion of its commitments.

*Auctions and 'First come first served'*

If allocation processes such as auctions and first come first served are used, the Commission will not allocate spectrum based on a subjective consideration of the licensee's intentions for use.

Due to the potential lack of vetting of individual licensees under these allocation methods there is likely to be a greater risk of spectrum hoarding and abuse. The need for revocation for non-use is therefore even more important. However these allocation methods require that in order to be fair, all spectrum licenses would have to contain the same conditions and timescales for revocation for non-use.

The downside of a blanket approach would be that not all licensee timescales for use and development of the spectrum will be the same, so inevitably a standardised clause here would leave some licensees less advantaged and more open to risk of revocation than others.

This further supports our position – and the Commission’s - that a comparative selection process is the most effective means of allocating licences in the Isle of Man.

iii. Non-compliance with investment commitments.

Our key concern for revocation rights are they are constructed to be fair, transparent and proportionate. This last requirement is open to wide interpretation and also ambiguity. As commercial operators we have to remain competitive in the market to provide the best service to the consumer. If our commercial investment strategies were constrained by the threat of spectrum revocation this could have a negative impact on the extent to which operators will invest and take commercial risks in order to improve service to the islands and its consumers.

Any revocation right directly linked to a licensee not meeting its investment commitment would add further risk to numerous projects and this could ultimately deter investment in the future and reduce competition on the island.

The key outcome which the Commission seems concerned to mitigate in (i) above and this section (iii) is spectrum hoarding, whereby an operator is failing to utilise spectrum which is a limited and valuable resource to the island. Our position is that spectrum hoarding can be completely controlled by a competent drafting of ‘use it or lose it’ clauses tied to particular timescales of utilisation.

iv. Other serious breaches of law or code

The suggestion that revocation of a licence should be a remedy available to the Commission for breaches by a licensed operator of other codes and statutory laws seems to go beyond the remit of the licence itself.

These laws and codes should already have remedies for their breach built into them. The most serious remedy available to the Commission for breach of these laws and codes, in the case of telecoms operators at least, is the revocation of its telecoms licence and its ability to operate or provide service on the island.

**Consultation Question 10. Do you consider that these proposals represent a reasonable basis for licence amendments? If not, what alternative would you propose? It would be helpful if you can give reasons and provide us with any evidence for your answer.**

C&WIoM agrees that the procedures for amending Telecommunications Act and Broadcasting Act licences should be proportionate to the issues at stake. Given the relatively small number of operators currently holding these operational licences within the Isle of Man, the Commission should have sufficient resource to be able to get involved with the individual applications of these individual operators. This goes for initial allocations, ideally issued under a comparative selection process, but also with any application by a licensee for alteration of its licence.

We appreciate, however, that the Commission does not want to unnecessarily burden the process for amending licences for minor issues. However we would need reassurance that the Commission has a clear policy for deciding when an amendment to a licence would be considered sufficiently large in impact as to warrant a full consultation with all other licensees and interested parties. Certainly any amendment to a licence which has a risk of affecting the quality of service of another telecoms operator must qualify for a consultation. It is worth noting that where the issuing of spectrum is for non-operational 'test and development' purposes, under Ofcom regulations, all users of spectrum on the island would have to be consulted.

An alternative approach which would avoid the need for such consideration of major versus minor changes and possibly negate the need for as many amendments in the first place, would be issuing licences which were agnostic / neutral to technology and services.

This has already been stated in our answer to question 6. Lowering the frequency of amendment requests would also reduce costs for the Commission.

**Consultation Question 11. Do you agree that these policies should underlie the Commission's decisions on fee setting? Are there any other factors which should be taken into account? It would be helpful if you can give reasons and provide us with any evidence for your answer.**

Any application of fees must be cost based, transparent and applied fairly. Whilst the Commission should be entitled to charge a fee for its management and administrative charges, it must not charge excessive fees which cannot be justified. We note the desire to charge a fee that reflects the commercial value of the spectrum and make comments below on each of the issues that the Commission believes should be taken into account when determining that commercial value.

*-The Commission's regulatory objectives.*

The actual issuing of spectrum licences is carried out by Ofcom. C&WIoM would expect that the cost associated with the preparation by the Commission of any spectrum consultations, together with the ongoing costs of ensuring compliance with any obligations, should already be adequately covered by the annual licence fee we pay for our Telecommunications Act licence. We would expect the Commission to look to these funds first as a way of covering its costs for managing licence applications and allocation before any additional fees are applied.

*-Rollout and coverage requirements.*

We appreciate the Commission wants to encourage coverage of rural areas and believe that the best way to achieve this is to make it a condition of a licence to supply coverage to these areas. This should be a consideration within the comparative selection process. We are not clear how the Commission would use the fee mechanism to ensure rollout and coverage obligations are met, unless it is envisaging a situation where it would request a higher licence fee from any operators only intending to provide limited coverage. If this was the case, then the surplus fees could be used as a universal funding mechanism to cover the higher costs of those operators that do offer services to less economical areas.

*-The need for spectral efficiency.*

If the Commission implements comparative selection as a process, and includes appropriate revocation rights in licences, then it should be able to mitigate any risk of wasteful spectrum allocation. We do not agree that introducing a fee on this basis would avoid spectrum waste. If a user is intent on wasting /misusing spectrum they could just pay the fee and continue to waste the spectrum in any event. It is far more important that the Commission gets the rights for revocation accurately drafted to give it the necessary 'teeth' to combat such waste.

*-Public policy objectives.*

We do not believe the application of fees is the best way to achieve your public policy objectives in relation to spectrum. In the first instance, if the Commission has further detail relating to a formal Spectrum Policy we would like to have clarification/sight of this. The key to obtaining parity between rural and urban areas is in the management and allocation of the licences themselves.

We strongly disagree that fees should be used to manage and attempt to control the spectrum market. The way to control use of spectrum by licensees is in the actual terms of the Telecommunication Act and Broadcasting Act licences themselves and the prudence the Commission takes in conjunction with Ofcom when deciding who should be awarded the spectrum.

**Consultation Question 12. How many licence applications would you be likely to make annually for services involving the use of the radio frequency spectrum? Do you think the Commission should automate its system and, if so, who should bear the cost? It would be helpful if you can give reasons and provide us with any evidence for your answer.**

C&WIoM's current Telecommunications Act licence already permits it to run telecommunications systems of every description so we do not believe that this question is relevant. As far as spectrum and trial licences are concerned, we believe that these should remain within Ofcom's remit.

In general, however, we believe that the Commission should focus on keeping administration fees low. The development of an online platform in a market which has relatively few operators would seem to be an expensive process. However we do accept that a well designed web platform could improve efficiency, speed up application processes and record keeping.

We do not require an online web platform and so we do not feel as though we should be obliged to cover the cost of its implementation. Furthermore a web based platform would not make applications necessarily any faster in circumstances where the Commission would have to involve other licensees in a full consultation. This is particularly relevant to issuing of Test and Development Licences. As per Ofcom's rules Test and Development licences cannot be issued unless all current spectrum users are consulted.

We would have to have a much better understanding of costs and functionality of any web based platform to give a definitive view.

**Consultation Question 13. Do you agree with the Commission's proposed position on licence exemption? It would be helpful if you can give reasons and provide us with any evidence for your answer.**

C&WIoM believes that the Commission should continue to work closely with Ofcom to consider which if any devices may not require a licence. The key consideration should be that there is no harmful interference caused to licensed operators from such devices.