

**Digital Economy Bill  
Briefing for Parliament from the Federation of Communication Services**

**16 December 2009**

***Summary***

- **FCS supports the Bill overall and encourages Parliament to scrutinise it fairly and bring it into law**
- **The Bill recognises the utility nature of electronic communications; competition in services and innovation will be driven by access to the networks; FCS supports reporting on network access**
- **Ensure that the UK's Critical National Infrastructure can have certain access to radio spectrum by including a further clause in the bill**
- **Ofcom should report on itself on how it provides access to radio spectrum**

***1 Support for the Bill overall***

FCS would like to express its support for the aims and aspirations of the Bill and encourages both Houses to provide fair and thorough scrutiny of the Bill and help to bring it into law in this Parliament.

***2 Support reporting on network access***

***Telecoms is a utility:*** The Digital Britain project and the Digital Economy Bill demonstrate the recognition by UK Government and Parliament that telecoms infrastructure is a utility that must be maintained and developed to the highest of standards of resilience for national benefit.

***Infrastructure is precious-*** there is a limited amount of utility infrastructure that the densely populated UK will sustain. Infrastructure used to support and develop the economy is crucial and access to that infrastructure on reasonable terms is essential to maximise its use for services, ensuring retail competition and innovation

***Reporting to Ofcom must not be a burden:*** We support the new duties on Ofcom, under the direction of the Secretary of State, SoS, to obtain reports from the telecoms industry on the state of infrastructure. Ofcom is a suitable body. But in taking on this new role Ofcom has to ensure that the data collection is not onerous on any part of the industry. In carrying out these new tasks Ofcom should tool itself with the highest calibre skills to conduct the work while minimising cost and disruption to industry.

***Access to networks is vital:*** FCS supports specifically the clause on page 3 line 28 [19 November 2009 version]

**Section 134 B 1 f) "the extent to which providers of the different UK networks allow other communication providers to use their networks to provide services"**

Highlighting and reporting on access to networks will demonstrate how use is being maximised and return on investment assured to the benefit of the economy as a whole.

***Where has access to networks proved a success?*** The Openreach model- under the BT Undertakings of 2005 Openreach was set up to supply bottleneck products on an equivalence basis to CPs including BT

Retail. In the intervening period Wholesale Line Rental has grown dramatically; competing CPs now deliver over 6 million lines and in addition another 6 million LLU lines have been unbundled

**Where is access to networks needed?** However access to the mobile infrastructure is limited to selective MVNOs delivering consumer services; there is no wholesale access requirement for the mobile networks for those CPs delivering services to the SME and larger business community, which we contest limits the opportunity for innovation, competition and diversity.

### **3 How can Critical National Infrastructure have certain access to spectrum in future?**

#### **Ofcom should report on access to spectrum for CNI**

The Critical National Infrastructure, CNI, in the context of this briefing is *“the essential services- those facilities, systems, sites and networks necessary for the delivery of essential services upon which daily life in the UK depends and which ensure the country continues to function socially and economically”*. FCS is particularly concerned that the CNI sectors including energy, transport, water and the emergency services should have certain access to spectrum in order to carry out their primary duties. With the change in spectrum allocation policies arising from the introduction of the spectrum market by Ofcom, the certainty that spectrum would be available for CNI has gone and like any commercial player the CNI organisations are encouraged to bid in an auction or trade. But if they are disappointed and lose out in an auction what are they to do to support their primary functions of keeping the electricity flowing or the planes flying?

We therefore propose that within the new General Duties of Ofcom in the Digital Economy Bill – page 1, line 3 - it should be explicit that Ofcom itself reports to the SoS on how it releases spectrum to ensure the appropriate levels of investment in electronic networks that support the CNI as well as publicly available telephony.

While the Digital Economy Bill includes references to radio spectrum for the privately owned telephony networks, certain access to radio spectrum to keep the country functioning is absent. Ofcom as the national spectrum manager should be directed by the SoS to have responsibility for ensuring spectrum is made available for these essential national functions.

We propose a new clause- adapting, with **the text in red** the amendment tabled by Lord Lucas:  
At end Page 19, line 24

***Ofcom must set aside a spectrum band or bands commensurate with the requirements of the UK Critical National Infrastructure in addition to spectrum not less than 15 MHz in total and lying within that part of the spectrum that is expected, under Council recommendation 10141/09 or subsequent proposals to be agreed upon for the extension of European emergency service access.***

***Ofcom may not release any of the spectrum so set aside unless it sets aside equivalent spectrum or determines after due consultation that such spectrum for the CNI or emergency services have no reasonable likelihood of requiring spectrum to be released***

#### **Federation of Communication Services**

The Federation of Communication Services, FCS, is the UK Trade Association representing 300 companies delivering products and services by means of fixed, IP and radio spectrum. The majority of [FCS members](#) are regulated by Ofcom under the General Conditions of Entitlement or radio spectrum licensing. Formed 30 years ago FCS manages codes of practice for the radio industry and provides self regulation schemes. FCS is the largest UK trade body in the sector.

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