

Consultation Paper on Data Limits and Data Services on Radio Multiplexes

O2 welcomes this opportunity to comment on DCMS' proposals to aid the development of mobile TV services over DAB digital multiplexes. We have limited ourselves to comments on the basis under which DCMS proposes to extend the maximum proportion of the multiplex capacity that is useable for data services, including *inter alia* mobile TV.

Ofcom has consulted on the future licensing of DAB and DCMS has used much of Ofcom's most recent Statement on this in its impact assessment. However, O2 has subsequently responded to the most recent consultation "*DAB Digital Radio : Future Licensing*" calling into question this analysis. We refer you to our response^{1[1]} on that consultation. O2 does not consider that DCMS has undertaken a sufficiently robust impact assessment until such time as both Ofcom and DCMS have addressed the issues we raise in that response.

The justification for this proposal, presented in the consultation, is inconclusive at best and misleading at worst. For example, at §2.7 DCMS states "*the BT trials showed that people spent more time listening to DAB radio than watching TV*". This is good news, as the digital multiplex is assigned to DAB. However §2.7 then somewhat illogically continues "*it is hoped that making additional spectrum available for TV will also have the effect of stimulating DAB listening.*"

At face value §2.7 is saying that users in the trial found DAB a more compelling proposition than the mobile TV service of BT Movio. Surely if there is more TV available on the device and TV therefore becomes more compelling, listeners will be converted to viewers? This would appear to run counter to the hypothesis suggested by DCMS. O2 would like to point out that the reason this spectrum is assigned for DAB is because of public policy decisions related to DAB digital radio and not TV. We believe that rather than examining the legal and policy implications of such a change in licensing, DCMS' impact assessment is an attempt to post rationalise this change in public policy.

At present the proposals appear to be focussed on providing windfall gains to BT Wholesale, by creating a statutory monopoly provider of *broadcast* mobile TV services. O2 would find DCMS' proposals much more defensible if they were part of a more coherent policy towards *broadcast* mobile TV in general. Such a policy might include:

- Clarification of the TV rights position for simulcast TV transmissions on other than the existing terrestrial and cable systems, in particular amendment of copyright legislation to ensure platform equality
- Bringing forward UHF Channel 36 for the provision of broadcast mobile TV services via DVB-H, such that BT Movio is subject to the competitive constraints that the current proposals so clearly lack.

We look forward to DCMS providing greater clarity on how its proposals fit in to a more cohesive approach to broadcast mobile TV services.

^{1[1]} <http://www.ofcom.org.uk/consult/condocs/dab/responses/organisations/o2.pdf>