



Response to Communications Act Review Open Letter

Submitted: 28th June 2011

The Mobile Operators Association (MOA) represents the four UK mobile network operators – Everything Everywhere (Orange & T-Mobile), O2, Three, and Vodafone – on radio frequency (RF) health and safety, and related town planning issues associated with the use of mobile phone technology.

The following is the response of the MOA to the questions asked in the open letter that are within our core remit.

Summary

- Digital connectivity is to the present day what railways and canals were to the first industrial revolution. It is important for businesses, for the delivery of public services, and for individuals. It enhances economic competitiveness and social inclusion.
- Mobile is fast becoming the medium of choice for web access, fuelled by the growth of smartphones, tablets, laptop and dongle. Today, around 24% of mobile phones are smart phones. By 2015, 75% of all phones will be smart phones. By 2014, 20% of computers will be tablets¹.
- Nor should it be thought that mobile communications are merely the preserve of the affluent: mobile connectivity is particularly important in enhancing social inclusion. Lower-income households are more likely to rely on a mobile phone than on a landline. Whereas 73% of people in the DE socio-economic range have access to fixed line telecommunications, 86% have access to mobile telecommunications².
- Mobile broadband will play an important role in connecting all parts of the UK and may be more cost effective to deploy than fixed line technologies in some rural areas.
- Mobile telecommunications are thus an essential component of digital connectivity, and should be seen as part of the UK's essential national infrastructure. It is vital that policy and regulation supports the provision of this infrastructure. This applies not

¹ Industry estimates -Spider Online 2011

² Ofcom Communications Market Report 2010 <http://stakeholders.ofcom.org.uk/market-data-research/market-data/communications-market-reports/cmr10/>

only to the regulatory regime relating specifically to communications, but also in other areas such as planning policy.

- In terms of communications policy, while we recognise the demands of other sectors, Ofcom must ensure that there is sufficient spectrum available to the mobile telecommunications industry to enable the provision of mobile broadband services, using both current technology, and newer, 4G services.
- Planning policy across the four nations of the UK should also be based on a presumption in favour of encouraging rather than restricting mobile telecoms infrastructure development, and local planning authorities should apply policy in that spirit.
- Local authorities should make their own land and property available for telecommunications network infrastructure development. Greater standardisation of processes and, in particular, better training, both for officials and elected councillors, could help reduce unnecessary inconsistency in the planning system. .
- Telecoms developers and most planning officers believe that the planning process would be improved if there was better dialogue with local planning officers, both pre-application and during the application process. However, a few planning departments appear to have a cultural aversion to such dialogue with developers, either before or during the application process.
- In England, we do not believe that there is a need for any wholesale changes to Part 24 of the General Permitted Development Order. However, we have set out some suggested amendments to make it easier to understand, for both telecommunications developers and planning authorities, and which may assist operators in responding to business and consumer demand for mobile services, without significantly affecting the built environment.
- We welcome the Welsh Assembly Government's Digital Wales Delivery Plan, which acknowledges the importance of high quality telecommunications to the Welsh economy, and also welcome the fact that this is reflected in the Welsh Assembly Government's Planning Policy Wales (2011).
- We support the fact that Scottish Government's Planning Policy (2010) states that planning authorities should support the expansion of the electronic communications network. However, we suggest that the Scottish planning framework should be improved by allowing a wide range of permitted development rights for telecommunications developments. We believe this would assist the delivery of the policy set out in *Scotland's Digital Future: A Strategy for Scotland*, which we support.
- Similarly, in Northern Ireland, telecommunications infrastructure developers are entitled to virtually no permitted development rights. This delays the deployment of new mobile phone base stations and places an unnecessary administrative burden on the planning system. This is against the context of Northern Ireland having less mobile coverage than the other constituent parts of the UK.

1. Introduction

1.1 The Mobile Operators Association (MOA) represents the four UK mobile network operators – Everything Everywhere (Orange & T-Mobile), O2, Three and Vodafone – on radio frequency (RF) health and safety, and related town planning issues associated with the use of mobile phone technology.

1.2 Section 2, below, outlines the benefits of mobile telecommunications to individuals, to communities, and to the economy as a whole, and hence why their importance must be recognised, not only as part of the review of the Communications Act, but also across many areas of Government policy. In section 3, we address those specific questions in the Secretary of State's open letter of 16th May, which are within our core remit.

2. Mobile Telecommunications: Essential National Infrastructure

2.1 Digital connectivity is to the present day what railways and canals were to the first industrial revolution. Mobile telecommunications, which are an integral component of providing such connectivity, are now widely accepted as being of strategic importance to individuals, to communities, and to the economy as a whole. The MOA and its members believe that this importance must be recognised, not only as part of the review of the Communications Act, but also across many areas of Government policy.

2.2 There are now more than 80 million mobile connections in the UK as a whole. Over 4 million customers now access mobile broadband via a laptop and dongle, and over 12 million own a smart phone.³ Mobile is fast becoming the web access medium of choice, fuelled by the growth of smartphones, tablets, and laptop and dongle. Today, 24% of mobiles are smart phones. By 2015, 75% of all phones will be smart phones. By 2014, and 20% of computers will be tablets.⁴ The average smartphone today has more computing power than Apollo 11.

2.3 Mobile broadband allows individuals to access a wide range of services. Common tasks now done online include: researching for a school project; applying to university; managing a bank account and paying bills; applying for a job, filing an income tax return; renewing a passport; and buying books.

2.4 The benefit of better connectivity to 'new economy' sectors, including those in the creative industries, is obvious. It is also vital to more traditional sectors, such as manufacturing, tourism, and food and drink. The Internet allows firms to research markets, advertise their wares to potential customers, and to take orders. It allows them to compete on a level playing field in the modern, global economy. Digital connectivity also enables teleworking, which is increasingly important in some sectors. The number of firms offering at least some teleworking rose from 14% in 2006 to 46% in 2008. While this is clearly not possible in all sectors, where it is possible, firms benefit from higher productivity, low absenteeism and better staff retention.⁵

2.5 The Internet is now also increasingly important in education. A fifth of teachers think it 'essential' for children to be able to surf the web to be able to do their homework properly, while 61% think it 'advisable'.⁶ Digital literacy and connectivity are to the present day what reading, writing and the provision of libraries were to the Nineteenth century.

2.6 Mobile telecommunications are also important for the NHS. The benefit of being able to summon the emergency services using a mobile phone is obvious. However, simply sending a text message to patients to remind them to keep their hospital, GP, or dental appointment

³ MOA - <http://www.mobilemastinfo.com/>

⁴ Industry estimates -Spider Online 2011

⁵ Home working: Why can't everyone telework? <http://www.bbc.co.uk/news/mobile/magazine-11879241?SThisEM>

⁶ TES survey mid 2010

not only saves on printing reminder letters, stationery, time stuffing envelopes and postage but there are fewer missed appointments⁷.

2.7 Most local authorities' services are now available online. Some councils have launched free mobile phone applications to provide instant access to services, and to allow residents to report litter, dog fouling, dumped rubbish, pot holes and road repairs, and anti-social behaviour.

2.8 Mobile broadband will play an especially important role in connecting rural areas, where it may be more cost effective to deploy than fixed line technologies. This could enhance the sustainability of rural communities: small local businesses do not exist in a vacuum -they need staff and customers. Good digital connectivity will encourage people to remain in rural communities, as it will allow them to access products and services that might not otherwise be available, and because of teleworking.

2.9 Mobile communications are also important in assisting inclusivity of socio-economic groups. Whereas 73% of people in the DE socio-economic range have access to fixed line telecommunications, 86% have access to mobile telecommunications. Access to mobile telecommunications rises to 99% of people in the 15-34 age range for these groups.⁸

2.10 Digital connectivity offers a route towards reducing the carbon footprint of business by reducing the need for travel via teleworking, video conferencing etc. The ability to work flexibility and from a range of locations also contributes to diversity within the workforce, for example, enabling those with caring commitments to continue to contribute to economic activity by working flexible hours or from home. UK wide digital connectivity widens the locations – urban and rural – from which new business requiring broadband access can be established.

3. Answers to Specific Questions

3.1 The following comments are specifically related to Questions 5 and 6 of the Secretary of State's letter of 16th May 2011.

Q5. What further market and regulatory developments would lead to widespread take-up of superfast broadband? What regulatory action would government need to take to make superfast broadband more readily available in a) urban areas; and, b) rural areas?

Planning Policy – General

3.2 While planning regulations are not the main focus of this review, ministers in all four nations in the UK must take account of the need to ensure that planning regulations, policy, and guidance facilitate the development of the infrastructure required to improve access to broadband in both urban and rural areas.

3.3 Local planning authorities have a key role to play in establishing policies that encourage and facilitate economic development. For example, local authorities should make their own land and property available for telecommunications network infrastructure development. The MOA would encourage DCLG to re-confirm policy as set out in Paragraph 22 of the current Planning Policy Guidance 8 – Telecommunications, that '*Authorities are encouraged to help [telecoms] applicants identify existing and potential sites by making suitable local authority*

⁷ <http://www.gponline.com/Medeconomics/article/927262/Texting-patients-saves-us-money/>

⁸ Ofcom Communications Market Report 2010 <http://stakeholders.ofcom.org.uk/market-data-research/market-data/communications-market-reports/cmr10/>

owned property available to users and by encouraging others to do the same with their property.' While this guidance applies specifically to England, the same principle should apply to planning policy in other parts of the UK.

3.4 A major bugbear of developers is inconsistency between, and sometimes within, local planning authorities (LPAs). To an extent, this is a problem that will always affect all planning systems everywhere, or indeed any system involving human agency. That said, inconsistency does drive up the cost of development, and just because some inconsistency is inevitable, that does not mean that all inconsistency should be tolerated. Greater standardisation of processes and, in particular, better training, both for officials and elected councillors, could be the way to reduce unnecessary inconsistency.

3.5 Telecoms developers also believe that there is a need for better dialogue with local planning officers, and this view is reciprocated by a majority of those officers. In many cases, planning officers are open to such dialogue, and mobile network operators will happily amend draft proposals for the design or siting of new base stations. However, a few planning departments appear to have a cultural aversion to dialogue with developers, either before or during the application process. Requests for pre-application discussion sometimes result in referral to the authority's website, which is already available to the developer, and other requests for information or discussion during the application meet silence. A number of planning authorities now charge fees for pre-application discussion. While we do understand the pressure on local authority resources, pre-application discussion should be regarded as a means to ensure that development that can benefit a community can proceed in a way that is sensitive to local needs, rather than an opportunity for local authorities to raise revenue: fees that are too high simply deter dialogue.

Planning Policy – England

3.6 In England, the MOA and its members do not believe that there is a need for any wholesale changes to Part 24 of the General Permitted Development Order. However, we have long argued that some amendments to Part 24 may make the GPDO easier to understand for both telecommunications developers and planning authorities and may assist operators in responding to business and consumer demand for mobile services, without significantly affecting the built environment. We have set out below some suggested changes to address the inconsistencies within the current GPDO.

Potential clarifications to Part 24

3.7 There are a number of issues within Part 24 of the GPDO that should be clarified if any amendments are to be made. Some initial suggestions are made below:

Two-stage process

The present Prior Approval (PA) procedure is in two stages: (1) is prior approval required?; and (2) if prior approval is required are the (siting/design) details acceptable? In the vast majority of cases the operators submit full details with an application for PA.

This procedure could be simplified to make it a single stage process.

Amendments

As currently worded, some LPAs seek new applications to approve amendments to an original application, even if they're minor changes (e.g. a change in fence type/height).

This is unhelpful and a waste of public and private sector resources. The GPDO should be clarified so that LPAs can give approval to amended details *without* the need for a new Prior Approval application.

Definition of antenna

Class A.1(a) & (b) Installation of apparatus exceeding 15m excluding any antenna is not permitted development. There have been a number of instances where the definition of antenna has been debated with a local authority in situations where the antennas extend above 15m. There is not a definitive answer as to what comprises an antenna - in these circumstances it may be useful to seek to add a definition of antenna to Part 24 and operators could help in this regard to ensure an appropriate definition is formulated.

Dish antennas on buildings over 15m

Class A.1(h)(i) We believe it would be appropriate to increase the aggregate size of dishes from 3.5m, to take account of current equipment.

Prior approval for radio equipment housing exceeding 2.5 cu m

Condition A.2(4)(b). Clarification is needed in any amended Part 24 as to whether this limitation is absolute, i.e. takes into account existing equipment housings or is per application. Operators could again help to ensure an appropriate definition is formulated.

Interpretation of Class A

"Antenna system" – with the recent and on-going consolidation of the mobile networks in the UK, the current definition of antenna systems may no longer be appropriate. It would perhaps need amending to cover the situation of a third party or joint venture operating a set of antennas through which the signals of more than one telecommunications code system operator are transmitted and received. Operators could again help to ensure an appropriate definition is formulated.

Highway Limitation

There is currently an anomaly in Part 24 that a face mounted antenna on a building requires full planning permission if the wall faces a highway, yet the same antenna could be mounted on a 3.9m pole on the roof without requiring prior approval.

Part 24 should be amended so that face mounted antennas on buildings are permitted development.

Potential additions to Part 24

There are a number of types of development that, we believe, should be included in the GPDO. These are small-scale installations that have little or no impact on existing structures and buildings but which are currently not classed as permitted development. Including these in any amended GPDO would enable LPAs to focus their resources on larger developments which have a greater impact on the local environment.

Site sharing

3.8 Increases in height of existing structures (within a certain limit) should not be subject to full planning procedures if the increase is made to enable the sharing of that structure. An additional limit of, for example 15% above the height of the existing structure could be permitted, if the purpose was to enable an additional operator to locate its antenna and related equipment on the mast/building. This would make the sharing of sites more attractive and could potentially reduce the number of additional structures built to accommodate base stations close to existing sites. This would also support Government policy of encouraging site sharing. Around two-thirds of base-stations in the UK are integrated into the design of existing buildings or structures. Network operators now also share sites wherever possible meaning that there will be fewer base station sites across the UK than would otherwise have been the case.

Planning Policy – Wales

3.9 The Welsh Assembly Government's The Digital Wales Delivery Plan⁹ has recognised the importance of high quality telecommunications to the economy. The Delivery Plan is clear that access to broadband (whether fixed line or mobile) is vital for both businesses and households.

3.10 We also welcome the Welsh Assembly Government's Planning Policy Wales (2011)¹⁰ which states that: "The Welsh Assembly Government recognises that widespread access to affordable, secure telecommunications infrastructure is important to citizens and businesses across Wales. It is important that the telecommunications infrastructure in Wales is able to meet this challenge, helping to build a thriving and prosperous Welsh economy." It goes on to say "Local planning authorities are encouraged to respond positively to telecommunications development proposals, whilst taking account of the advice on the protection of urban and rural areas."

3.11 It is vital that the planning system in Wales enables the on-going delivery of the telecommunications networks. We believe that the current telecoms planning system in Wales remains broadly 'fit for purpose'. However, as new technologies start to be deployed, it may become necessary to review the current permitted development rights regime to ensure that local planning authorities are not required to unnecessarily consider planning applications for small-scale developments that have no impact on the built environment. Our comments applying to the GPDO regime in England apply equally in principle to the system in Wales. As in other parts of the UK the Welsh planning system must remain responsive to the operators' need to react to continued increases in consumer demand for mobile technology.

Planning Policy – Scotland

3.12 The current Scottish planning system has only been in operation since the Planning etc. (Scotland) Act 2006 came into force, and is still bedding in. It broadly works well, though needs improvement in some respects, in order to assist the delivery of the policy set out in *Scotland's Digital Future: A Strategy for Scotland*, which we support.

3.13 We support the Scottish Government's Planning Policy (2010) which states that: 'Planning authorities should support the expansion of the electronic communications network, including telecommunications, broadband and digital infrastructure, through the

⁹ <http://wales.gov.uk/topics/businessandconomy/digitalwales/?lang=en>

¹⁰ <http://wales.gov.uk/docs/desh/publications/110228ppwchapter12en.pdf>

development plan and development management decisions, taking into account the economic and social implications of not having full coverage or capacity in an area'. However, the Scottish planning framework does not encourage the development of mobile telecommunications networks. For example, telecommunications infrastructure developers are entitled to very limited permitted development rights, and such rights should be introduced in Scotland.

3.14 The MOA and its members support the idea, recently put forward by Centre for Scottish Public Policy (CSPP) that planning training should be compulsory for elected members of Planning Authorities (just as it is for Licensing). Although most Planning Authorities have made moves to ensure that the majority of their members have received an amount of initial training, legislative backing for mandatory training, as is the case for Licensing Boards, would ensure that all members who take part in the determination of a planning application will have at least a fundamental understanding of: the planning system; relevant planning policy; and the impact their decisions have in relation to the wider aims of their local authority and/or community.

3.15 Targets for dealing with planning applications within LPAs can also be a problem, as they can create perverse incentives, and incentivise speed above quality. For example, some planning authorities appear routinely to turn down some applications to meet a % target of decisions within 2 months, but then tell the developer to resubmit with only minor modifications and at no cost. If they took the time to discuss changes to the first application, it would reduce effort and bureaucracy for everyone, but would cause the target to be missed. In such cases, what is happening is that the planning department receives an application that in its original form is unacceptable, but could be made acceptable with only minor modification. The applicant would be perfectly happy to make the minor modification. However, that would entail discussion and some delay, and would mean that the application is decided out with the target timescale. The planners then tell the applicant to resubmit a separate revised application, and that is then quickly approved. In 'tick box' terms, that gives two applications determined within the target timescale. However, that delays development and it means that the planning department and the developer are, in effect, looking twice at, essentially, the same application. More discussion early on could save everybody's time, effort, and cost, and would be the common sense approach, but perverse incentives in the system discourage this.

3.16 In Scotland, an appeal against a decision taken under delegated powers is heard by a Local Review Body (LRB) with the direct involvement of local councillors. The LRB is designed to provide an independent appeal mechanism; but in practice, they seem sometimes to be rubber-stamping original decisions, in circumstances where developers would have expected to have a successful appeal under the old system i.e. before the Planning etc. (Scotland) Act 2006, and when appeals went to ministers.

Planning Policy – Northern Ireland

3.17 In Northern Ireland, telecommunications infrastructure developers are entitled to virtually no permitted development rights. This means that all developments, no matter how small, need to go through the full planning application process before they can proceed. This not only results in delays in the deployment of new mobile phone base stations, but places an unnecessary administrative burden on the planning system. This is against the context of Northern Ireland having less mobile coverage than the other constituent parts of the UK. In 2010, 2G mobile population coverage in Northern Ireland reached 89 per cent, against a UK average of 97 per cent. However, coverage for 3G was only 40 per cent.

3.18 The mobile operators have long called for an amendment to the planning regime in Northern Ireland to reintroduce appropriate permitted development rights for telecommunications developments. Such a move would realign Northern Ireland with the England and Wales and would help to facilitate investment in the mobile telecoms infrastructure and contribute to economic growth.

3.19 In October 2009, the Planning Service Northern Ireland published a consultation paper on permitted development rights. Section 5.3 of the consultation set out a number of proposals for telecommunications developments on the introduction of new permitted development rights, as follows:

- [GDO] Part 17 to be changed to apply to development by Electronic Communications Code Operators;
- Replacement of an existing mast (which was previously erected under permitted development rights or with express planning permission) and replacement of apparatus on an existing mast;
- Extension of an existing mast by 10% above its original permitted height;
- Addition of new apparatus on an existing mast providing it does not extend the mast above 10% of its original permitted height;
- Where equipment is added to an existing mast, a requirement for a declaration that the proposed equipment and installation is designed to be in full compliance with the requirements of the radio frequency public exposure guidelines of the International Commission on Non-ionising Radiation Protection (ICNIRP) statement;
- A requirement for 'Appropriate notice' to be given to the local planning authority of the intention to install, alter or replace electronic communications apparatus and following use of land in an emergency;

The MOA response to these proposals is summarised below.

3.20 The proposals to allow the extension of an existing mast by 10% above its original permitted height and the addition of new apparatus on an existing mast providing it does not extend the mast above 10% of its original permitted height were welcome. However, a general 10% increase in height may not be sufficient to encourage/permit site sharing. For example, a 10% increase in height for a 15-metre mast would be 1.5 metres. Such an increase would most likely be insufficient to give an acceptable separation between antenna systems. Therefore, while we believe the principle of this change to be a good one, the detail of the allowed increase requires further consideration.

3.21 The majority of mobile network infrastructure is small and has little visual impact on the environment. Enabling the operators to make minor changes to their equipment, without the need to apply for full planning permission, would have two major benefits. First, the changes would enable the operators to quickly respond to increased consumer demand for mobile services. Second, it would reduce the administrative burden on the planning system, which would no longer be required to consider detailed applications for such minor amendments, thereby providing greater resources for the considerations of more significant developments.

3.22 It is important that the planning system in Northern Ireland is not seen as a disincentive to investment in infrastructure. Additional permitted development rights currently apply in other parts of the UK and inappropriate planning restrictions can affect the way in which limited funds are allocated to network deployment.

3.23 Finally, any changes to the regulations (as part of the overall review) should involve a simplification of the wording currently used.

3.24 The availability of mobile telecommunications services in urban and rural areas cross Northern Ireland can be a major driver to economic growth. These services can only be made available through the timely deployment of the mobile networks, which provide the coverage and capacity required by users of these services.

Q6. What are the competing demands for spectrum, how is the market changing and how can a regulatory framework best accommodate any rapidly changing demands on spectrum and market development?

Ofcom must ensure that there is sufficient spectrum available to the mobile telecommunications industry to enable the provision of mobile broadband services, using both current technology, and newer, 4G services.

A fair and well-balanced reallocation of the unprecedented amount of spectrum that will be freed up in the switchover from analogue to digital terrestrial TV, between the mobile broadband, broadcasting and ICT industries, will ensure that society reaps the full social and economic benefits of the Digital Dividend. This Digital Dividend spectrum is located between 200 MHz and 1GHz. This spectrum band offers an excellent balance between transmission capacity and distance coverage. Because of its longer wavelength, this spectrum will require less infrastructure to provide wider mobile coverage, meaning that communications services can be provided in rural areas at lower cost.
