Written Evidence submitted by Arqiva (DEB 38)

Digital Economy Bill Committee

Summary of key points

- Arqiva welcomes the Digital Economy Bill as supporting investment, productivity and inclusion.

- The Bill seeks to lay the foundations to achieving better connectivity across the UK. We believe this will help accelerate our economy – supporting innovation, business growth and job creation.

- The key provision that we have an interest in relates to the revision of the Electronic Communications Code (clauses 4-7 and schedules 1-3).

- We welcome the Government's decision to maintain a clear distinction between agreements to access land and agreements for sharing space on purpose-built and serviced communications infrastructure sites.

- This is a vital distinction to ensure long-term investment in communications infrastructure and it recognises the economic and social value from that investment.

- It is right for the legislation to confirm that the definition of "land" (paragraph 104 in Schedule 1 of the Bill) does not include electronic communications apparatus – this definition should only change if it more effectively ensures that the revised Code delivers the Government's policy objectives.

About Arqiva

Arqiva is a communications infrastructure and media services company operating at the heart of the mobile and broadcast industries. Arqiva provides infrastructure for television, radio, mobile and other wireless communication in the UK.

Arqiva operates shared radio site assets throughout the UK, working with the mobile industry for over two decades and with a significant presence in suburban and rural areas. Our portfolio includes over 8,000 active mobile, radio and television sites.

Arqiva worked with DCMS to build new shared sites in 'not-spots' as part of the Mobile Infrastructure Programme (MIP). We also extend the mobile operators' coverage and capacity into challenging environments such as Canary Wharf and the ExCel Centre.

Arqiva is building a national Internet of Things ("IoT") network, starting with 10 of the UK's largest cities. Our smart metering service, connecting 10 million homes using long-range radio technology, will be one of the UK's largest machine-to-machine deployments.

Arqiva is a founder member and shareholder of Freeview. We broadcast all eight Freeview multiplexes, are the licensed operator for four of them. Arqiva is the licensed operator of both national commercial DAB digital radio multiplexes.

Arqiva is a major player in the UK's satellite industry and is a major provider of permanent satellite services to both Freesat and Sky customers. Arqiva also provides global satellite based services to the security, oil & gas and exploration sectors.

Arqiva is owned by a consortium of long-term investors and has its headquarters in Hampshire, with major UK offices in London, Buckinghamshire and Yorkshire.

1. Revision to the Electronic Communications Code

1. The Electronic Communications Code (the Code) exists in large part to create the legal framework to enable communications companies to build and maintain infrastructure on private land and for landowners to receive fair value for the use of their land. We welcome the decision to revise the Code and we support the policy goals that the new Code seeks to deliver.

2. The existing Code is now over three decades old and it is in need of updating to reflect the changes in the needs of consumers and in the communications industry since it was first introduced. So we welcome the many changes and improvements in the new Code and support the outcomes that it seeks to deliver.

3. We particularly welcome the Government's decision to clarify the distinction between agreements to access land, and agreements for sharing space on purpose-built and serviced communications infrastructure sites. This is a vital distinction to ensure continued investment in infrastructure and it recognises the economic, environmental and social value from investments in shareable communications infrastructure.

4. The policy position underpinning the legislation ensures that the value from the competitive market for wireless communications infrastructure continues to be delivered. It recognises the importance to the UK of making long term investments in infrastructure and getting mobile and other communications services to consumers in some of the most challenging areas of the country.

2. Investment and the market for communications infrastructure

5. The Government recognises the importance of ensuring that the Code does not harm investment into infrastructure when it says:

    "The Government considers that the original purpose of the Code was to provide a legislative framework to enable access to land for the siting of communications infrastructure, not to enable access to the infrastructure itself. The basic rationale for the Code has not changed, and we do not want to disrupt market incentives for investment in passive infrastructure by establishing a legal framework to allow compulsory access and thereby subject the market to further regulation."[1]

6. The independent infrastructure invested in by the Wholesale Infrastructure Providers (WIPs) delivers benefits for all parts of the communications ecosystem:

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[1] A New Electronic Communications Code, DCMS, May 2016, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/523788/Electronic_Communications_Code_160516_CLEAN_NO_WATERMARK.pdf

- **Consumers** benefit as they get better coverage, from more operators and the lower costs of roll out mean lower phone bills;
- **Operators** benefit from reduced costs and faster roll out of their networks;
- C**ommunities** benefit as fewer masts are required so there is less visual impact, and the availability of mobile and other communications services adds to the attractiveness of an area for residents and business; and
- The **environment** benefits as there are lower energy and construction costs from fewer masts.

7. Increasingly, mobile operators have sought to access infrastructure jointly through sharing arrangements. They have done this in the UK by setting up joint ventures (EE and H3G setting up MBNL, and Vodafone and Telefónica/O2 setting up CTIL and Beacon) as well as making use of WIPs, whose business model is based on allowing assets to be shared as widely as possible.

8. While much policy focus is typically given to the requirements of mobile operators, the infrastructure provided by the independent WIPs is also crucial to delivering other services such as fixed-wireless broadband, radio and TV broadcast, emergency services, Internet of Things and machine-to-machine communications.

9. Multiple communications providers sharing infrastructure ensures that the costs for mobile operators can be lower. This makes it more cost effective to improve coverage, including rolling out mobile services to areas where it may be unprofitable for the mobile operators to invest in additional assets of their own. This is illustrated in the diagram below:

Figure 1: Breakdown of sites by player type and location
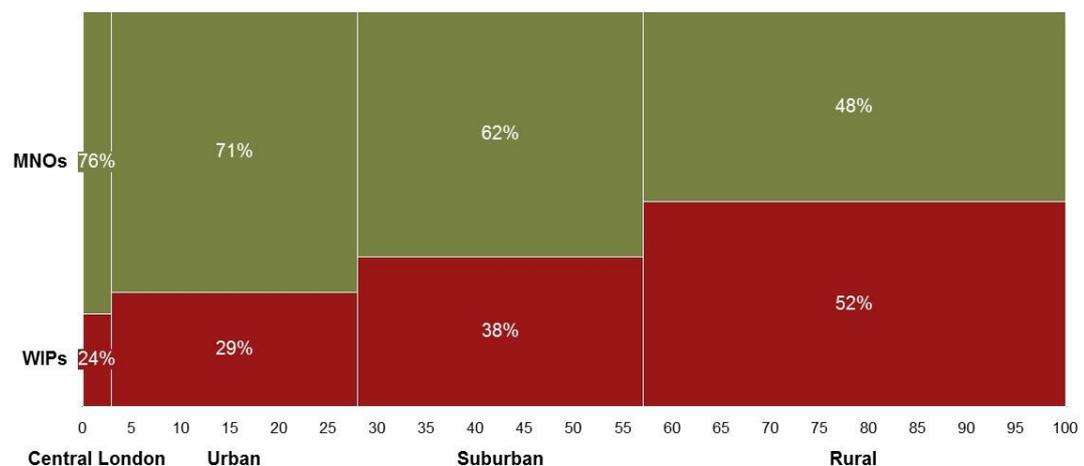
Source: AT Kearney

10. This diagram shows that despite WIPs accounting for only around a third of the total UK macro sites[2], we provide more than half of the sites in rural areas. This is consistent with the benefits we would expect to see from maximising sharing opportunities, particularly where costs of site deployment would otherwise be expected to be high.

11. The higher rate of sharing achieved by independent infrastructure providers reduces the need to build more masts, speeds up deployment and reduces mobile operators' total lifecycle costs. WIPs are also able to reduce operating costs and lower the cost of capital. This is as a result of the ownership and operation of masts being our core business.

12. The difference in costs for a WIP mast compared to a mobile operator's self-build mast was shown by Analysys Mason in the extract below from its May 2016 report:

Figure 5.6: Total cost of ownership: comparison of self-build tower vs WIP licence model (GBP thousand per site in NPV terms) [Source: Industry submissions]
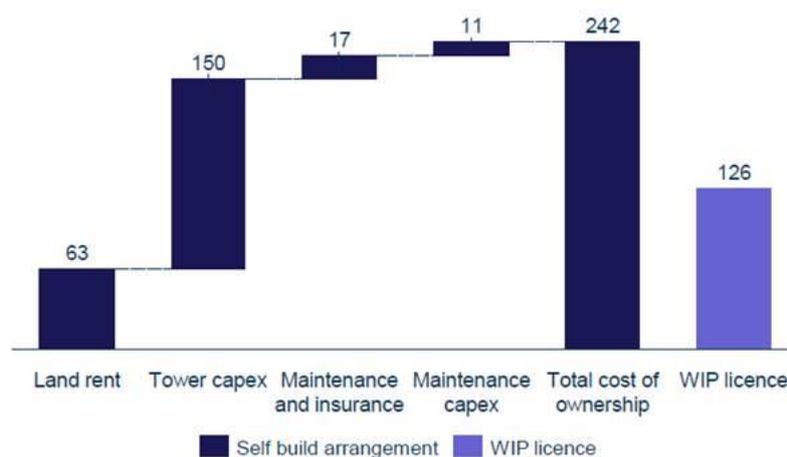
Source: Analysys Mason,

13. This report[3] was commissioned by the Department for Culture Media and Sport (DCMS) to inform its policy approach to reforming the Code.

3. Existing regulation and competitiveness

14. We welcome the Government's recognition that there is already a legal framework in place to regulate access to the infrastructure owned by the WIPs when it says:

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[2] See paragraph 16 below
[3] Financial Impact of Electronic Communications Code Changes, Analysys Mason, May 2016: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/523787/Analysys_Mason_-_Financial_impact_of_ECC_changes_-_Final_report__3_.pdf

> *"We are of the view that physical apparatus is distinct from land, and that the revised Code should therefore not be used to regulate access to infrastructure owned by WIPs. Ofcom is the established independent regulator for market and competition in the digital communications sector and we would expect them to use their powers to regulate access to all digital communications infrastructure if there is evidence of a problem."[4]*

15. Ofcom, as the independent market and competition regulator for the communications sector, has powers in the Communications Act 2003 to deal with disputes in relation to communications providers if there is evidence of a problem. We are not aware that there has ever been a dispute between a mobile operator and a WIP around sharing infrastructure that has been referred to the regulator. This suggests a properly functioning market for shared communications infrastructure – something that is also supported by a number of competition investigations that have repeatedly found it to be competitive. This functioning market would be disrupted if the Code introduced unnecessary, overlapping intervention.

16. In the UK, the mobile operators own and operate the majority of passive mobile assets. In its May 2016 study for DCMS, Analysys Mason estimates that around a third of the UK's mobile masts are owned by WIPs[5] (this contrasts with the United States, where EY has estimated that 84% of market share is accounted for by independent providers). Therefore, as well as competition from within the WIP sector, WIPs face competition from the mobile operator's self-providing mobile infrastructure especially through CTIL and MBNL. The two-thirds of the market owned by the mobile operators acts as a competitive constraint on the independent WIPs.

4. Impact of the Digital Economy Bill on mobile connectivity

17. Given the existing legal framework, the practical considerations and the potential impact on investment in a competitive market (with the possible subsequent impact on coverage and consumer prices) it is right for the legislation to confirm that the definition of "land" (paragraph 104 in Schedule 1 of the Bill) does not include electronic communications apparatus. This definition should only change if it more effectively ensures that the revised Code delivers the Government's policy

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[4] Digital Economy Bill Factsheet – Digital Infrastructure, DCMS, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/535011/5._Digital_Infrastructure.pdf

[5] On page 6 of their report Analysys Mason estimate that there are around 33 000 physical mobile towers/rooftops across the UK of which around 11, 000 are owned by WIPs and around 22, 000 are owned by the mobile operators.

objectives, i.e. that it is not "used to regulate access to infrastructure owned by WIPs" and to ensure that the Government does not "disrupt market incentives for investment in passive infrastructure"

18. More broadly, when it comes to using the Code in relation to land, the expectation of communications providers is that the Code will continue to be a measure of last resort. The Government expects land rents for communications infrastructure to fall when the new Code is in place. Nonetheless, as we do today, we would expect the majority of agreements to be consensually negotiated without recourse to the courts. However, the Code provides a clear route and process to ensure the provision of vital communications infrastructure should that not be possible.

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