



# Pay TV channels on multiplexes B, C and D

Proposal to remove the 'free to air only' requirement

## **Consultation**

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## Section 1

# Introduction

## Background

- 1.1 The majority of television viewers in the UK receive their television channels over the terrestrial transmission network. In a few years time, analogue transmissions over this network will be phased out and replaced with digital transmissions. Already, over 5 million viewers watch digital terrestrial television (DTT) – Freeview.
- 1.2 Digital terrestrial television is transmitted on television multiplexes. A multiplex is a collection of television programme, radio and data services that are broadcast together in a digital signal that occupies no more spectrum than just one analogue television service. Multiplexes are licensed by Ofcom under the Broadcasting Act 1996 or, in the case of multiplex 1, granted by the Government.
- 1.3 There are six television multiplexes:
  - Multiplex 1 is operated by the BBC, carries BBC services and is not licensed by Ofcom.
  - Multiplex 2 is operated by Digital 3&4 Ltd (jointly owned by Channel 3 and Channel 4) and the capacity on this multiplex is split between Channel 3 (48.5% ), Channel 4 (48,5%) and the Public Teletext service (3%).
  - Multiplex A is operated by SDN Ltd (controlled by ITV plc), and 50% of the capacity on this multiplex is reserved for Channel 5 and (in Wales) S4C.
  - Multiplex B is operated by BBC Free to View Ltd (BBC FTV).
  - Multiplexes C and D are operated by National Grid Wireless Ltd (NGW) (until recently called Crown Castle UK Ltd).
- 1.4 The multiplex licences contain conditions for the provision of services over the multiplex and the behaviour of licensees. All multiplex licences issued by Ofcom are available on the Ofcom website, [www.ofcom.org.uk](http://www.ofcom.org.uk), under Broadcasting-TV / Information for Industry / Television Broadcast Licensing.

## **‘Free to air only’ requirement in multiplex B, C and D licences**

- 1.5 The licences for multiplexes B, C and D were re-advertised by the ITC in 2002, following the demise of ITV Digital. Following a competition, the licences were awarded to linked proposals from BBC FTV (multiplex B) and NGW (multiplexes C and D). Part of their proposition was that the services carried on the multiplexes would be free to air, and that the platform would be marketed as “free” (Freeview).
- 1.6 The licences were awarded to BBC FTV and NGW on the basis that they include a requirement that any services carried “shall be provided on a free to air basis save with prior consent of Ofcom” to reflect the commitments in their licence applications. The other multiplexes licensed by Ofcom (multiplex 2, held by Digital 3&4 Ltd, and multiplex A, held by SDN Ltd) do not contain any restriction on whether they carry pay or free to air services (although they do contain other obligations to do with the public service broadcasting (PSB) services they carry).

- 1.7 The DTT platform has developed rapidly under the Freeview brand since the award of the licences, including a successful pay television option, provided by Top Up TV, a pay TV operator. (The pay services that Top Up TV markets are carried on multiplex A). Ofcom believes that there are good arguments to support a proposal to remove the 'free to air only' (FTA) requirement on multiplexes B, C and D on the basis that the requirement is no longer necessary.
- 1.8 Ofcom's policy is to remove regulation where it is not necessary and to promote competition. It considers that finding the right balance between pay and free to air services on DTT can be left to the multiplex licensees. As a safeguard there remains, in all multiplex licences, a condition which states that the multiplex licensee cannot change the services they carry in a way which would "unacceptably diminish" the capacity of the services provided to appeal to a variety of tastes and interests.

### **Consulting on removing the 'free to air only' requirement**

- 1.9 Ofcom believes that it would be consistent with its regulatory principles and in the interest of consumers to offer BBC FTV and NGW a variation to remove the FTA requirement. However, this represents a change in policy from when the licences were awarded by the ITC in 2002 which it is appropriate to consult publicly on.
- 1.10 This consultation sets out the options for changing the licence requirements (including not changing them), and invites comments on Ofcom's proposals from interested parties. The specific questions are set out in Annex 4 of this consultation. Annex 1 sets out how to respond to the consultation.
- 1.11 Ofcom would like responses to this consultation in particular from:
- interested members of the public;
  - those who represent the interests of people who watch television or listen to radio and sound programmes including those representing minorities;
  - broadcasters regulated by Ofcom;
  - companies, professional organisations, associations, bodies, groups or individuals who have an interest in the pay or free to air television market;
  - companies, professional organisations, associations, bodies, or individuals who work in the broadcasting sector or related sectors;
  - other regulators.
- 1.12 This consultation document also represents Ofcom's impact assessment (IA) as defined by section 7 of the Communications Act 2003 (the Act). IAs provide a valuable way of assessing different options for regulation and showing why the preferred option was chosen. They form part of best practice policy-making and are commonly used by other regulators. This is reflected in section 7 of the Act, which means that generally we have to carry out IAs where our proposals would be likely to have a significant effect on businesses or the general public, or when there is a major change in Ofcom's activities. In accordance with section 7 of the Act, in producing the IA incorporated within this document, Ofcom has had regard to such general guidance as it considers appropriate, including related Cabinet Office guidance.

## Section 2

# The 'free to air only' requirement

## Background

- 2.1 The licence holders for multiplex B (BBC FTV) and multiplexes C and D (NGW) can only lease capacity on their multiplex to free to air channels, unless the licence holders get Ofcom's consent to carry pay channels.
- 2.2 The award in 2002 of the multiplex licences to NGW and BBC FTV was conditional on the inclusion of a number of additional licence conditions, including the 'free to air' (FTA) requirement and certain restrictions on the access of British Sky Broadcasting Ltd (Sky) to multiplex capacity. The requirements relating to FTA services were put in place because FTA broadcasting on these three multiplexes was a central feature of the linked bids from NGW and BBC FTV. Sky was involved with the bids as a channel provider.
- 2.3 Given Sky's position in the supply of pay TV services on the digital satellite platform, there was a potential concern that its participation in an alternative digital TV or pay TV platform could reduce the degree of future competition between the two platforms. Sky was therefore limited to supplying a maximum of three channels (together with directly related interactive services) on multiplex C, and these channels had to be FTA.
- 2.4 The other multiplexes licensed by Ofcom (multiplex 2 and multiplex A) do not have any such restriction (although they do contain other obligations related to the PSB services they carry). On multiplex 2, capacity is reserved for Channel 3, Channel 4 and the Public Teletext Service, and only the holders of the Channel 3 licences and the Channel 4 licence may hold the multiplex 2 licence. Multiplex A differs slightly as its licence can be held by a commercial operator, however, it is required to reserve 50 per cent of the capacity on multiplex A in the UK for Channel 5 (Five) and 50 per cent of its capacity in Wales for S4C. SDN Ltd can use the remaining capacity to carry other broadcasters. Five is required to provide its PSB channel (the Channel 5 service) on its portion of multiplex A but it has been allowed to sub-contract the remaining capacity (the part of Five's gifted capacity which is not required for the broadcast of the Channel 5 service).
- 2.5 Ofcom could offer BBC FTV and NGW to amend or remove the FTA requirement in the multiplex B, C and D licences, subject to the licensees' consent. Alternatively Ofcom could wait for the licensees to make a request and then decide on the matter.

## Ofcom's duties

- 2.6 One of the factors Ofcom must take into account in considering whether the FTA requirement should be removed or amended is the extent to which any of the possible options considered here help Ofcom to fulfil its duties under the Act.
- 2.7 Ofcom's relevant duties in this area include the following:
  - Furthering the interests of consumers and citizens, where appropriate by promoting competition. This is Ofcom's main duty under section 3(1) of the Act;
  - The optimal use of the electro-magnetic spectrum;

- The availability throughout the UK of a wide range of TV and radio services of high quality and broad appeal; and
  - The maintenance of sufficient plurality of providers of different TV and radio services.
- 2.8 Section 3(4) further set out certain factors which Ofcom should have regard to in performing its principal duty of furthering the interests of citizens and consumers. The ones which are most likely to be relevant here are:
- the desirability of promoting the fulfilment of the purposes of public service television broadcasting (PSB) in the United Kingdom;
  - the desirability of promoting competition in relevant markets;
  - the different needs and interests of all users, both current and potential, of the spectrum used for DTT capacity; and
  - the opinions of consumers and members of the public.
- 2.9 In carrying out an impact assessment Ofcom should also ensure that regulation does not involve the imposition or maintenance of unnecessary burdens (section 6(1) of the Act).

### Options to consider

- 2.10 We believe that the following options should be considered:
- Status quo – Ofcom could maintain the current FTA requirement. This would mean not offering to amend the licences. The existing requirement would be justified if there were grounds to believe that, as a result of removing the requirement, broadcasters could shift from providing FTA to pay TV and this shift could have detrimental effects on Ofcom fulfilling its duties.
  - Removing the requirement for all licences – If Ofcom found that the current requirements were ineffective, hindered Ofcom in the fulfilment of its duties and/or imposed an unnecessary burden on licensees, Ofcom should consider their removal. Under this option Ofcom would signal that it would be minded to remove the FTA requirement on multiplexes B, C and D, if the licensees consented. There could be two ways to implement this:
    - Ofcom offers to remove the FTA requirement for these multiplexes (although some licensees may not give consent); or
    - Ofcom offers to remove the FTA requirement in response to an explicit request from each licensee.
  - Remove the requirement on a case-by-case basis – Ofcom could conclude that it is not appropriate to look at the requirement as a whole but that there are differences depending on the multiplex. Ofcom should therefore decide on the merit of each case. For example, the FTA requirement on multiplex C not only prevents use of the capacity to provide pay TV services in general, but also means that the three services that Sky is allowed to provide on multiplex C must be free to air. Therefore, removing the FTA requirement for multiplex C may have a different impact from removing the same requirement for multiplex B or D.
- 2.11 These issues are analysed further in the light of Ofcom's duties below.

## Status quo

- 2.12 At the time the licences for multiplexes B, C and D were issued in 2002, the justification for including a FTA requirement in the licences was based on the desire to hold the Freeview consortium to the terms of their application so that Freeview could be launched with a clear and distinctive marketing proposition. The fact that this requirement is only in place for some of the multiplexes and not on others (a pay TV operator, Top Up TV, currently sub-leases capacity from Five on multiplex A) means that it affects the ability of the existing pay TV operator to seek to expand its service offering, or a new potential pay TV operator to supply their services on DTT.
- 2.13 It is unclear at the moment whether, and if so how, the FTA requirement could help Ofcom to fulfil its duties under the Act. It is unclear whether the original regulatory concerns which existed in 2002 are still valid in 2005. Indeed it appears to Ofcom that maintaining the FTA requirement may not assist Ofcom in the carrying out of its duties.
- 2.14 First, it could be argued that the FTA requirement does not facilitate the optimal use of spectrum insofar as it leads to an excess demand for DTT capacity for pay TV channels which cannot be met, at least in the short term. If the value of DTT multiplex capacity for a pay TV channel is higher than that for an FTA one, the requirement may not lead to an optimal use of the spectrum allocated to DTT broadcasting. This is because it may artificially create scarcity for DTT capacity to be used for pay TV services<sup>1</sup>. Keeping other factors constant, the value to consumers of an additional FTA TV channel can be expected to decline with the number of channels already available. This is because one can expect FTA channels to try to capture the wider possible audience and in doing that not provide a large variety of TV genres<sup>2</sup>. The same may not be true with pay TV channels, as they could target new niche audiences. Therefore, any additional pay TV channel is more likely to be different from existing ones and as such could be more valuable to consumers.
- 2.15 Second, if one were to follow the market definition recently suggested by the OFT (there may be two separate markets for DTT capacity; one for pay TV on DTT and one for FTA<sup>3</sup>) the FTA requirement may prevent rather than promote competition.

<sup>1</sup> This is about the value to consumers of different possible uses of the spectrum allocated to DTT, everything else being equal. The current prices for new DTT capacity (e.g. in the order of £5-7m per video stream per year) are significantly higher than a year or two ago when capacity was being traded at £2-3m per video stream per year. This, however, largely reflects the success and future prospects for the DTT platform and the premium on a scarce resource such as DTT multiplex capacity.

<sup>2</sup> There is some evidence that the value of further FTA TV channels on DTT declines with the number of channels. Work undertaken by Rand Europe for the Radiocommunications Agency used stated preference information to estimate the determinants of consumers' willingness to pay. It estimated that depending on the demographic the coefficient for the (log) of the number of channels approximately ranged between 0.3 and 0.7. This means that value of each additional channel declined with the number of channels. Rand Europe, "Terrestrial Digital Television RP/SP Survey Main Results", Report to the Radiocommunications Agency, 10 December 2001.

<sup>3</sup> The OFT in its recent decision on the ITV/SDN merger (Anticipated acquisition by ITV plc of SDN Limited, 24 August 2005) concluded that the market for the purpose of the merger analysis of this case was limited to the supply of capacity on DTT (thus excluding capacity on digital satellite and cable multiplexes). This was based on the following considerations:

- Because broadcasting is a fixed cost activity all types of broadcasters would have an incentive to be on all platforms. Therefore, DTT, satellite and cable are complements rather than substitutes;
- Currently there is a strong demand for capacity on DTT (compared to Cable and satellite) despite there being limited capacity available; and
- By the time DSO occurs in 2012 DTT will be the default platform and consequently channels will want to be on it.

This is because the requirement limits the supply of DTT capacity for pay TV use. Compared to a situation where there is no FTA requirement, this could potentially lead to higher prices for pay TV DTT capacity and reduced choice for TV operators and ultimately consumers.

- 2.16 Third, it is unclear whether the FTA requirement helps to foster plurality, promote the fulfilment of PSB purposes or ensure that a wide range of TV services are available throughout the UK. PSB broadcasters are already guaranteed access to capacity (BBC on multiplex 1, Channel 3/Channel 4/Public Teletext on multiplex 2, and Five/S4C on multiplex A). Therefore, the presence of the FTA requirement arguably does not affect the current provision of PSB services.
- 2.17 It is equally unclear whether it contributes to maintaining a wide range of choice for UK viewers on DTT. The variety and choice for viewers is largely guaranteed by the strong presence of PSB providers on DTT, and the FTA requirement only applies to multiplexes B, C and D which are considered to be “commercial” multiplexes, i.e. with no obligation to reserve capacity for PSB services. It may well be that allowing pay TV channels to emerge on these multiplexes could increase the variety and choice of services available to UK consumers. This is because while FTA channels derive their revenues from advertising and therefore need to attract wide audiences, pay TV channels are able to target niche demand. Pay TV channels could therefore perhaps cater to a larger variety of viewers than FTA channels.
- 2.18 However, it could also be argued that the FTA requirement helps prevent any inappropriate influence of the DTT platform by pay TV operators and so ensure that FTA DTT services are and will be available to almost all UK consumers – especially after Digital Switchover (DSO). Insofar as this is an important consideration, it is likely to be less relevant in the long run. Improvements in encoding and compression technology, together with the likely increase in capacity at DSO<sup>4</sup> and the further possibility that some of the spectrum released at DSO could be acquired by broadcasters means that the overall DTT capacity and, hence, the number of TV channels and other services on DTT could be expected to increase in the long run. This means that the removal of the FTA requirement may not lead to an absolute reduction in FTA services, even if a substantial part or all of the capacity on multiplexes B, C, and D is used for pay TV.
- 2.19 It could further be argued that it is unlikely that the removing the requirement could lead to a shift from FTA to pay TV, other than in the medium to long term. Generally, contracts on multiplexes for use of DTT multiplex capacity are in place for a considerable length of time (sometimes for the entire duration of the multiplex licence). If this were the case also for multiplexes B, C and D it could mean therefore that there are considerable contractual impediments for current capacity usage being changed from FTA to pay TV. Therefore, if the change in use from FTA to pay TV were to happen, it is likely to occur gradually and mostly affecting newly created capacity. Ofcom would welcome information from stakeholders as to where there are contractual restrictions to the use of DTT capacity being changed (i.e. from FTA to pay TV).

The OFT also considered that the current restrictions on multiplexes (together with demand considerations) suggest that DTT multiplex capacity for data, radio and pay TV should be considered separately.

<sup>4</sup> Under current digital switchover proposals, it is expected that the usable capacity on each of the BBC's multiplexes (multiplex 1 and, through BBC FTV, multiplex B) will increase by approximately one third, from 18Mbit/s to 24Mbit/s, creating a number of additional slots after switchover.

## Removal of the FTA requirement on multiplexes B, C and D

- 2.20 Under this option, Ofcom would remove the FTA requirement from multiplexes B, C and D (subject to the licensees' consent). Whilst in 2002, this requirement may have been appropriate and warranted given the uncertainty in DTT broadcasting, it could now be seen as being unduly restrictive. Ofcom's policy is to remove regulation where it is not necessary. There might therefore be merit in leaving the balance between pay and FTA TV services on "commercial" multiplexes B, C and D to the market. This would ensure that the spectrum allocated to DTT is used for those services that are most valued by the market.
- 2.21 As mentioned above, there are some reasons to believe that the highest value could be placed on pay TV rather FTA services at the current level of supply. As the value of additional generalist FTA channels declines with the number of existing channels, consumers may find it more valuable to have access to more specialised pay TV channels. This is because there may be more value in having an additional channel which is highly differentiated and caters to a niche audience (but with strong preferences) than one that is very similar to those already available, therefore, contribute little to enhance consumer choice. These considerations may be strengthened if and when further capacity on the DTT platform becomes available further reducing the value of additional FTA channels.
- 2.22 Removing the FTA requirement may promote competition in the supply of DTT capacity for pay TV, especially in the short term. Currently, pay TV channels can only be carried on multiplex 2 (but Channel 3 and Channel 4 mainly use their capacity for FTA channels) and multiplex A. This could lead to higher prices for DTT capacity for pay TV (than in the absence of the FTA requirement) and so could hamper the development of a pay TV service on DTT. Removing the FTA requirement would improve competition in the supply of DTT multiplex capacity for pay TV services.
- 2.23 It could be further argued that the emergence of a competing pay TV provider on DTT may have the effect of potentially reducing any market power that Sky has in the supply of pay TV (and especially premium) services and, therefore, bring about benefits in terms of increased competition. While the removal of the FTA requirement on multiplex C could enable Sky to change the three channels it currently supplies from FTA to pay TV channels, this is unlikely to change the conclusions that the removal of the requirement could allow either a new pay TV operator to emerge or an existing one (like Top Up TV) to expand. This is further discussed in the third option below.
- 2.24 As discussed above, removing the FTA requirement appears unlikely to affect the achievement of Ofcom's other relevant duties in the broadcasting sectors as it would not negatively affect the supply of PSB services and it is unlikely to result in a decrease in choice or availability of TV services across the UK.
- 2.25 There could be two ways to remove the FTA requirement. Ofcom could offer to remove it for all three multiplexes – although some licensees may not give their consent. Alternatively, Ofcom could only remove these obligations following a request from a multiplex licensee. In practice Ofcom believes that there is little difference between the two given that licensees will have to give their consent in either case. The former option, however, may perhaps offer more certainty to stakeholders.

## Remove the FTA requirement on a case-by-case basis

- 2.26 Ofcom could also consider agreeing to the removal of the FTA requirement for each of the multiplexes separately. For example, there may be an additional argument for retaining the requirement on multiplex C (where Sky has access to capacity to provide three channels) which would not apply to multiplexes B and D. This could imply that Ofcom may decide to remove the requirement on the latter but at this stage maintain the FTA requirement on multiplex C. Furthermore, distinct considerations may apply to multiplex B as it may be less likely that BBC FTV would use DTT capacity for pay TV services.
- 2.27 This option relies heavily on the possible concern that if the requirement is removed on multiplex C, Sky may change the nature of its three channels from FTA to pay. Because of the FTA requirement Sky can currently only provide these as FTA channels. However, if the requirement was removed Sky would be free to alter the existing channels (currently Sky Three, Sky News and Sky Sports News) into pay TV channels. Sky could, however, only change these named channels, or make significant changes to the nature of their content, if Ofcom agreed to vary the Core Proposals for multiplex C.
- 2.28 It is currently unclear whether Sky would have the incentive to do so and, if so, whether this would give rise to any effects that Ofcom should be concerned about. From Sky's point of view it would need to consider which is the most profitable use of the three video streams on multiplex C. This involves taking into account the impact that this choice may have on Sky's satellite business. For example, by making the three channels on DTT very attractive to consumers in terms of the available pay TV content it may contribute to the success of the DTT platform and hence negatively impact on its satellite business take-up. Therefore, if it were to change its channels to pay TV, Sky is likely to have an incentive to make them complementary rather than substitutable for Sky's satellite services. A further disincentive for Sky to change its three channels into pay TV channels comes from the fact Ofcom understands that the majority of the existing DTT set top boxes in the UK do not have the capability to support pay TV services<sup>5</sup>. This means that Sky's pay TV offer on DTT would have to be sufficiently attractive to either drive consumers to replace their set top box or generate sufficient revenues for Sky to subsidise its replacement. Given that Sky is restricted to the usage of three video streams, it therefore seems unlikely that this incentive would be sufficiently strong.
- 2.29 Even if Sky did change its current three channels into pay TV services it is unlikely that this would have any significant effects in terms of reducing the competitive constraint that DTT exerts on Sky's satellite pay TV business. This is because these channels are only a very small part of the channels and services that are available on DTT. With improvements in compression and encryption technology Sky's channels would consist of a declining proportion of all DTT services.

<sup>5</sup> Most integrated Digital Television Sets (iDTVs) and some Set Top Boxes have the capability to support pay TV services. These include all of the boxes supplied to subscribers of the pay TV operator OnDigital, subsequently ITV Digital, who are no longer in business. (Our research shows that around 290,000 are still in use.) Newer pay-capable boxes either have slots for a plug-in pay TV conditional access module or have an integrated module for pay TV services supplied by Top Up TV. It is likely that many non-subscribers have purchased Top Up TV compatible set top boxes in order to leave the pay TV option open for the future. Top up TV's service is accessible using all generations of box and iDTV, not just those of the latest design. Ofcom understands that it is unlikely that any pay TV operator other than Top Up TV would be able to use these set top boxes to provide their own services (either without Top Up TV's permission or by upgrading them).

- 2.30 Therefore, the possibility that Sky could use its three channels to leverage its market power in the provision of pay TV services into DTT does not appear to be a significant concern. The restriction imposed on Sky to provide only three DTT channels rather than the FTA requirement effectively limits Sky's possible incentive and ability to leverage its market power.
- 2.31 Multiplex B is licensed to BBC FTV. It is possible that the removal of the FTA requirement on multiplex B would have limited practical effect. This is because BBC FTV has so far not leased (or used) any of the capacity on multiplex B for pay TV services. However, multiplex B is a "commercial" and not a PSB multiplex and as such it may be important to remove restrictions when they are unnecessary and could become a burden in the future (i.e. if BBC FTV decided to use capacity for pay services).

### **Option assessment and recommendation**

- 2.32 On the basis of the above discussion it would appear, therefore, that there are reasons for the removal of the FTA requirement in the interests of not only meeting Ofcom's policy objective to remove regulation where it is not necessary but also in furthering competition, for example, in the provision of pay TV services. We also consider that finding the right balance between pay and free to air services on DTT can be left to the multiplex licensees.
- 2.33 Ofcom also considers that the argument for offering to remove the FTA requirement on multiplexes B, C and D appears stronger than the considerations in favour of maintaining the requirement on multiplex C in order to assuage some possible concerns about Sky leveraging its market power. It appears that the existing restrictions on Sky are sufficient for this purpose. Furthermore, any other form of behaviour which may cause concerns would be subject to applicable competition law. As a safeguard there remains, in all multiplex licences, a condition which states that the multiplex licensee cannot change the services they carry in a way which would "unacceptably diminish" the capacity of the services provided to appeal to a variety of tastes and interests. This is in addition to the regulatory instruments (such as general competition and merger law) that apply in any case.
- 2.34 Therefore, Ofcom is minded to propose to offer changing the licences to remove the FTA requirement to the licensees for multiplexes B, C and D. The purpose of this consultation is to invite views on this proposal and the options considered, The specific questions on which Ofcom seeks a response are set out in Annex 4 of this consultation.

## Annex 1

# Responding to this consultation

## How to respond

Ofcom invites written views and comments on the issues raised in this document, to be made by **5pm on 12 January 2006**

Ofcom strongly prefers to receive responses as e-mail attachments, in Microsoft Word format, as this helps us to process the responses quickly and efficiently. We would also be grateful if you could assist us by completing a response cover sheet (see Annex 2), among other things to indicate whether or not there are confidentiality issues. The cover sheet can be downloaded from the 'Consultations' section of our website.

Please can you send your response to [erika.forsberg@ofcom.org.uk](mailto:erika.forsberg@ofcom.org.uk).

Responses may alternatively be posted or faxed to the address below, marked with the title of the consultation.

Erika Forsberg  
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Note that we do not need a hard copy in addition to an electronic version. Also note that Ofcom will not routinely acknowledge receipt of responses. It would be helpful if your response could include direct answers to the questions asked in this document, which are listed together at Annex 4. It would also help if you can explain why you hold your views, and how Ofcom's proposals would impact on you.

## Further information

If you want to discuss the issues and questions raised in this consultation, or need advice on the appropriate form of response, please contact Erika Forsberg on 020 7981 3885.

## Confidentiality

Ofcom thinks it is important for everyone interested in an issue to see the views expressed by consultation respondents. We will therefore usually publish all responses on our website, [www.ofcom.org.uk](http://www.ofcom.org.uk), ideally on receipt (when respondents confirm on their response cover sheet that this is acceptable).

All comments will be treated as non-confidential unless respondents specify that part or all of the response is confidential and should not be disclosed. Please place any confidential parts of a response in a separate annex, so that non-confidential parts may be published along with the respondent's identity.

Ofcom reserves its power to disclose any information it receives where this is required to carry out its legal requirements. Ofcom will exercise due regard to the confidentiality of information supplied.

Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use, to meet its legal requirements. Ofcom's approach on intellectual property rights is explained further on its website, at [www.ofcom.org.uk/about\\_ofcom/gov\\_accountability/disclaimer](http://www.ofcom.org.uk/about_ofcom/gov_accountability/disclaimer).

### **Next steps**

Following the end of the consultation period, Ofcom intends to publish a statement (2-3 weeks after the close of the consultation).

Please note that you can register to get automatic notifications of when Ofcom documents are published, at [http://www.ofcom.org.uk/static/subscribe/select\\_list.htm](http://www.ofcom.org.uk/static/subscribe/select_list.htm).

### **Ofcom's consultation processes**

Ofcom is keen to make responding to consultations easy, and has published some consultation principles (see Annex 2) which it seeks to follow, including on the length of consultations.

If you have any comments or suggestions on how Ofcom conducts its consultations, please call our consultation helpdesk on 020 7981 3003 or e-mail us at [consult@ofcom.org.uk](mailto:consult@ofcom.org.uk). We would particularly welcome thoughts on how Ofcom could more effectively seek the views of those groups or individuals, such as small businesses or particular types of residential consumers, whose views are less likely to be obtained in a formal consultation.

If you would like to discuss these issues, or Ofcom's consultation processes more generally, you can alternatively contact Vicki Nash, Director, Scotland, who is Ofcom's consultation champion:

Vicki Nash  
Ofcom (Scotland)  
Sutherland House  
149 St. Vincent Street  
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Tel: 0141 229 7401  
Fax: 0141 229 7433  
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## Annex 2

# Ofcom's consultation principles

A2.1 Ofcom has published the following seven principles that it will follow for each public written consultation:

### Before the consultation

A2.2 Where possible, we will hold informal talks with people and organisations before announcing a big consultation to find out whether we are thinking in the right direction. If we do not have enough time to do this, we will hold an open meeting to explain our proposals shortly after announcing the consultation.

### During the consultation

A2.3 We will be clear about who we are consulting, why, on what questions and for how long.

A2.4 We will make the consultation document as short and simple as possible with a summary of no more than two pages. We will try to make it as easy as possible to give us a written response. If the consultation is complicated, we may provide a shortened version for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.

A2.5 We will normally allow ten weeks for responses to consultations on issues of general interest.

A2.6 There will be a person within Ofcom who will be in charge of making sure we follow our own guidelines and reach out to the largest number of people and organisations interested in the outcome of our decisions. This individual (who we call the consultation champion) will also be the main person to contact with views on the way we run our consultations.

A2.7 If we are not able to follow one of these principles, we will explain why. This may be because a particular issue is urgent. If we need to reduce the amount of time we have set aside for a consultation, we will let those concerned know beforehand that this is a 'red flag consultation' which needs their urgent attention.

### After the consultation

A2.8 We will look at each response carefully and with an open mind. We will give reasons for our decisions and will give an account of how the views of those concerned helped shape those decisions.

## Annex 3

# Consultation response cover sheet

- A3.1 In the interests of transparency, we will publish all consultation responses in full on our website, [www.ofcom.org.uk](http://www.ofcom.org.uk), unless a respondent specifies that all or part of their response is confidential. We will also refer to the contents of a response when explaining our decision, without disclosing the specific information that you wish to remain confidential.
- A3.2 We have produced a cover sheet for responses (see below) and would be very grateful if you could send one with your response. This will speed up our processing of responses, and help to maintain confidentiality by allowing you to state very clearly what you don't want to be published. We will keep your completed cover sheets confidential.
- A3.3 The quality of consultation can be enhanced by publishing responses before the consultation period closes. In particular, this can help those individuals and organisations with limited resources or familiarity with the issues to respond in a more informed way. Therefore Ofcom would encourage respondents to complete their cover sheet in a way that allows Ofcom to publish their responses upon receipt, rather than waiting until the consultation period has ended.
- A3.4 We strongly prefer to receive responses in the form of a Microsoft Word attachment to an email. Our website therefore includes an electronic copy of this cover sheet, which you can download from the 'Consultations' section of our website.
- A3.5 Please put any confidential parts of your response in a separate annex to your response, so that they are clearly identified. This can include information such as your personal background and experience. If you want your name, address, other contact details, or job title to remain confidential, please provide them in your cover sheet only so that we don't have to edit your response.

## Cover sheet for response to an Ofcom consultation

### BASIC DETAILS

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

### CONFIDENTIALITY

What do you want Ofcom to keep confidential?

Nothing	<input type="checkbox"/>	Name/contact details/job title	<input type="checkbox"/>
Whole response	<input type="checkbox"/>	Organisation	<input type="checkbox"/>
Part of the response	<input type="checkbox"/>	If there is no separate annex, which parts?	

If you want part of your response, your name or your organisation to be confidential, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

### DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response. It can be published in full on Ofcom's website, unless otherwise specified on this cover sheet, and I authorise Ofcom to make use of the information in this response to meet its legal requirements. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name

Signed (if hard copy)

## Annex 4

# Consultation questions

**Question 1:** *Do you agree with Ofcom's proposal to offer BBC Free to View Ltd and National Grid Wireless Ltd licence variations which would remove the 'free to air only' requirement in their multiplex licences?*

**Question 2:** *Do you think Ofcom should offer to remove the 'free to air only' requirement for all three licences (multiplexes B, C and D), or offer to remove the 'free to air only' requirement on a case-by-case basis, and if so, on what grounds?*

**Question 3:** *Are there, in your view, any other matters that Ofcom should take into account that are not raised in this consultation?*