



Television Multiplex Licence Renewals

Multiplex A & Multiplex 2

Consultation

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Closing Date for Responses: 17 January 2008

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Section 1

Summary

- 1.1 This document sets out our proposals on the decisions we are required to make in inviting two television multiplex licensees to apply for renewal of their licences. In all these decisions, Ofcom is subject to the consent of the Secretary of State.
- 1.2 Two Broadcasting Act digital terrestrial television multiplex licences, for Multiplex A and Multiplex 2, will expire in 2010. Under the terms of the Act, the licensees have been able to apply for renewal of their licences at any time since the end of 2006.
- 1.3 We are opening this consultation now in the interest of informing licensees and other stakeholders of our current proposals early enough to allow for thorough consideration before applications are formally invited.
- 1.4 In renewing these two licences, we are proposing not to require any changes in relation to:
 - the coverage of services provided under the licence; or
 - the licensees' obligations in relation to the acquisition by households of digital equipment.
- 1.5 We are also proposing not to set an Additional Payments rate for these licences, in light of our intention to introduce Administered Incentive Pricing (AIP) for the spectrum the licensees use, from the end of 2014.
- 1.6 It is worth noting that Ofcom is currently consulting on options for the development of the DTT platform. These proposals could involve reorganising the use of some existing multiplexes to allow for the adoption of more advanced technical standards and facilitate the introduction of new services. We do not consider that there is a strong link between the subject matter of the two consultations, though it is possible that the consultation on multiplex reorganisation may lead to changes in the licences of these or other DTT multiplexes.
- 1.7 We welcome responses on our proposals.

Section 2

Background to the Consultation

Statutory requirements and background

- 2.1 Section 16 of the Broadcasting Act 1996 (“the Broadcasting Act”) sets out that a television multiplex licence, if granted within six years of the Act, may be renewed, on one occasion, for a period of twelve years beginning on the date on which it would otherwise expire. Each licence holder may submit an application for renewal during a specified timeframe, beginning four years prior to the original expiration date of its licence.
- 2.2 Two of the five existing Digital Terrestrial Television multiplex licences, those for Multiplex A and Multiplex 2 (“Mux A” and “Mux 2”) will expire in 2010. It is therefore currently open to these licence holders to submit renewal applications, as the period for renewal has already begun. The remaining three Broadcasting Act DTT multiplex licences will not expire until 2014.
- 2.3 The end date for renewal applications is set, under statute, by Ofcom. We are required to set a “Relevant Date”, a date by which we consider we would need to start a formal re-advertisement process for the licence if, for any reason, the renewal were not to go ahead. In relation to these licences, we have set the Relevant Date at 18 months before each licence expires. The resulting closing dates for renewal applications, set under the 1996 Act as three months prior to the Relevant Date, are 15 February 2009 for Mux A and 19 March 2009 for Mux 2.
- 2.4 As part of the renewal process, Ofcom must reach decisions on certain issues that were set out in the Broadcasting Act.
- 2.5 First, we may require the licence holder to make supplementary proposals in relation to two aspects of the licence :
 - we may require a new technical plan. This plan indicates the likely coverage area of the service, the timetable during which this coverage would be achieved, and the technical means by which it would be established;
 - we may also require supplementary proposals for the promotion of, or assistance with, the acquisition of equipment capable of receiving multiplex digital services in the area.
- 2.6 Ofcom may set specific requirements that these new proposals must meet, and if we do so, we will assess the application in part on the basis of how well these requirements are met. However, Ofcom requires the consent of the Secretary of State before it may require new proposals, or set the requirements by which these proposals will be judged. We also require consent before we can confirm a decision not to require any such proposals, or not to set new requirements.
- 2.7 If Ofcom has required a supplementary technical plan, or proposals relating to the acquisition of equipment, we have powers to include conditions in the renewal licences that seem to us to be necessary to secure their implementation.

2.8 Second, Ofcom may, subject to the Secretary of State's consent, set the percentage of multiplex revenue (PMR) that licence holders will have to pay during the renewed licence period.

2.9 The Broadcasting Act, through the measures outlined above, provides Ofcom and the Secretary of State with the means of:

- altering coverage-related aspects of multiplex licences;
- altering any requirements to promote, or assist, the acquisition of receiving equipment; and
- setting additional payments, in the form of PMR.

The purpose of this consultation is to present Ofcom's proposals for the multiplex licence renewal process, including how we intend to exercise the powers granted to us, subject to consent of the Secretary of State, set out above.

Section 3

Ofcom's proposals

Coverage-related obligations to be inserted in DTT multiplex licences

- 3.1 Ofcom has previously addressed the issue of DTT multiplex coverage obligations after switchover in the statement "Switchover Related Changes to DTT Licences", which was published in 2006.
- 3.2 In this statement, Ofcom set out that multiplex licence holders who are currently providing a service in analogue form must ensure that their digital services achieve the same level of coverage reached by their analogue services.
- 3.3 We also specified that all of the PSB multiplexes should achieve this level of coverage.
- 3.4 Last, we confirmed that the coverage of the commercial multiplexes should be for their operators to decide, provided coverage did not fall below pre-switchover levels. Paragraphs 3.5-3.12 explain the reasoning behind this decision.
- Multiplex 2*
- 3.5 Since Multiplex 2 carries Channels 3 (ITV1 and GMTV) and Channel 4, among others, its coverage obligations are directly affected by the sections of the Communications Act which deal with the provision of Channel 3 and Channel 4's DTT services. In effect, any increase in Channel 3 or Channel 4's coverage obligations would necessarily mean an increase in the obligations of their associated multiplex.
- 3.6 The Communications Act states that Channel 3's DTT service should "appear to Ofcom to be a service that is equivalent in all material respects to the service the provision of which in analogue form was authorised by the existing licence" (Section 215 (4) (b) Act).¹
- 3.7 Ofcom has interpreted this obligation to mean, among other things, that this channel's digital service should continue to serve the same geographical area as the former analogue service.² It is on this basis that Ofcom inserted obligations in Channel 3's Digital Replacement Licence requiring it to provide 98.5% (equivalent to current analogue coverage) of households with access to their services.³
- 3.8 With respect to Channel 4, Ofcom is not under an explicit obligation to ensure that the service provided under its DRL is equivalent in all respects to the existing one. However, in view of Ofcom's general duties under Section 3 of the Act, we have decided that Channel 4 should be placed under the same obligations as Channel 3 to

¹The Communications Act 2003, <http://www.opsi.gov.uk/acts/acts2003/30021--g.htm#215>

² Ofcom Statement "Switchover related changes to DTT licences", 07/12/06, p. 10
http://www.ofcom.org.uk/consult/condocs/dtt_changes/statement/statement.pdf

³ The obligation on Ofcom to secure coverage equivalent to a channel's analogue coverage also applies to Channel 5. Channel 5's analogue coverage currently stands at 73%. Its DRL states that it must not allow digital coverage to fall below the current analogue level of 73%. It is expected that Channel 5 will move to a PSB multiplex at DSO and so increase its coverage beyond that, i.e. to 98.5% of households.

ensure that the burden of costs associated with switchover are spread equitably between all of the holders of DRLs⁴.

- 3.9 The obligations placed on Channels 3 and 4, through their DRLs, were subsequently mirrored in Multiplex 2's licence, which was varied to match the increased coverage obligation of 98.5%.

Multiplex A

- 3.10 With regard to Multiplex A, Ofcom has stated that "commercial multiplex operators should be able to determine their own coverage objectives in light of their particular commercial interests provided that they do not allow the coverage of any multiplexes to fall below its current level [of 73%]"⁵. We have also predicted that the commercial multiplexes will at DSO be able to boost their power at these current sites and achieve coverage of around 90%. In effect, the same 81 transmitters currently providing 73% of households with digital services will be able, after DSO, to provide 90% of households with digital services.
- 3.11 The coverage requirements in both licences have been widely consulted and confirmed for some time. It is therefore our current intention not to require a supplementary Technical Plan relating to coverage as part of the process of renewing either licence.
- 3.12 With regard to other technical matters specified in the licences, we are similarly not proposing any changes in this consultation. Changes to the technical standards used to broadcast DTT are a major policy issue, and should be consulted on separately, and in relation to all relevant parts of the DTT platform, not only in relation to those licences which require to be renewed.
- 3.13 In this context, it should be noted that we are consulting separately on the possible reorganisation of DTT multiplexes in order to facilitate the technical progress of the platform. This separate consultation may lead to changes to the conditions contained in one or more DTT multiplex licences. These issues will be addressed in the separate consultation on multiplex reorganisation.
- 3.14 Furthermore, the Secretary of State may require us to seek supplementary coverage proposals as part of this statutory renewal process. Such a request could potentially lead to changed coverage obligations, in either licence.

Question 1: Do you agree that the coverage obligations on Multiplex 2 and Multiplex A should remain the same as previously consulted on, confirmed and set in their current licences?

Promoting or assisting the acquisition of digital equipment

- 3.15 In their original applications, the licensees of Muxes A and 2 were required to demonstrate how they would promote or assist the acquisition of digital equipment.⁶ At the time, digital receiving equipment was not readily available and there was a degree of uncertainty surrounding the emergence of digital terrestrial television. It was difficult to envisage what actions would need to be taken to promote the uptake of DTT. Each of the licensees made a general proposal to work, with other licence holders, to market the concept of digital television in the UK.

⁴ "Switchover related changes to DTT licences", p.22

⁵ "Switchover related changes to DTT licences", p.2

⁶ As required under section 7 (4) (f) of the 1996 Broadcasting Act.

- 3.16 To this end, in the 1990s Muxes A and 2 became members of the Digital Television Group (DTG) which was set up to facilitate the introduction of DTT in the UK. In 2005, Muxes A and 2 officially became part of Freeview, the name under which free-to-air DTT is marketed. Both licensees are also shareholders in Digital UK, the independent organisation which provides information to viewers on digital switchover, and works with consumer groups and other key stakeholders to coordinate the technical issues relating to DTT roll out and switchover.
- 3.17 The circumstances in which Muxes A and 2 currently operate are very different from those of 1996: the process of digital switchover is currently underway and as of the end of June 2007, 84% of UK households received digital television⁷. In this context and given the role of Digital UK, it is our current intention not to require further proposals from the licence holders of Muxes A and 2, with respect to promoting or assisting the acquisition of digital equipment.

Additional Payments

- 3.18 Under the 1996 Broadcasting Act, television multiplex licensees may be required to pay a percentage of their “Multiplex Revenue” in respect of their licences. The Act requires Ofcom to consider the appropriate percentage of multiplex revenue to be paid in respect of either licence. The percentage payable may vary over the duration of the licence, provided that this variation is set in the licence conditions at the time of award. The rate or rates specified may not be changed once the licence is awarded.
- 3.19 In 2004 Ofcom defined multiplex revenue as “all payments or other financial benefit received... in consideration of the inclusion in the services carried on the multiplex of advertisements or other programmes, or from charges for the reception of programmes included in those services. It also includes all payments received by the television multiplex licensee, or any connected person, in respect of the broadcasting of any qualifying service by means of the television multiplex licence or payments made to enable the television multiplex licence holder to meet its additional payments.”⁸
- 3.20 If we decide to set a percentage, we need the Secretary of State’s consent to include this obligation in the licence. In addition to these powers of consent, the Secretary of State may also positively direct Ofcom to set a particular rate; or make an order specifying that no rate shall be set.
- 3.21 In considering whether to set a rate, and what rate to set, it is important to bear in mind that Ofcom intends to introduce pricing for spectrum used for terrestrial television broadcasting, starting from the end of 2014. The pricing mechanism that Ofcom intends to employ is Administered Incentive Pricing, “the charging of annual fees for the holding of spectrum that reflect the opportunity cost of the holding of that spectrum”.
- 3.22 Given that Ofcom intends to charge licence holders for their use of broadcasting spectrum through AIP, essentially the question for Ofcom is whether broadcasters

⁷ Ofcom, The Communications Market: Digital Progress Report: Digital TV, Q2 2007

http://www.ofcom.org.uk/research/tv/reports/dtv/dtv_2007_q2/dtvq207.pdf

⁸ “Qualifying Revenue and Multiplex Revenue: Statement of Principles and Administrative Arrangements under Broadcasting Act 1990, Broadcasting Act 1996 and the Communications Act 2003”, laid before Parliament 16 December 2004, Ofcom. p6

http://www.ofcom.org.uk/tv/ifi/guidance/multiplex/qualifying_revenue.pdf

should also be required to pay a percentage of their multiplex revenue in respect of any value in the multiplex licence other than that already captured by AIP.

3.23 It is important to note that the 1996 Act did not set any specific limits or purpose for us, or for the Secretary of State, in setting PMR. The Act, therefore, enables Ofcom to charge licensees not only for the 'spectrum' value of the multiplex licence but also for any additional non-spectrum value associated with the licence. AIP only reflects the opportunity cost of spectrum and cannot be used to reflect any non-spectrum value of a Broadcasting Act Multiplex Licence.

3.24 In considering whether to propose a rate, Ofcom has identified the following options (each of which will include AIP as an additional or sole spectrum pricing mechanism):

Option 1: Set a zero rate for the entire duration of the licence, using AIP as the sole pricing mechanism starting from 2014;

Option 2: Set a rate or rates to run throughout the duration of the licence, in recognition of some or all of the value in the licence. This rate would need to take into account the fact that AIP will be applied from the end of 2014; conversely, in implementing AIP we would need to take account of any PMR payments that are directly linked to the value of the spectrum.

Option 3: Set a zero rate from the start of the licence, with a positive rate to start at a later date, say in 2014. As above, we would need to take into account the expected introduction of AIP.

Option 4: Set a rate to apply at the start of the licence, to fall to a zero rate at the end of 2014.

3.25 It is important to note that Ofcom has previously confirmed⁹ that no licensee should find itself in the position of paying twice for the same spectrum rights. The precise mechanism for ensuring this will depend on:

- which of the above options is pursued;
- the outcome of the Secretary of State's consideration of PMR;
- our final decision in setting the AIP charge for the spectrum.

3.26 Our preferred approach is Option 1, setting a zero PMR rate for the entire duration of the licence, relying on AIP as the sole pricing mechanism, starting from the end of 2014 when the remaining multiplex licences will expire.

3.27 Ofcom believes that this approach would be more appropriate than the other three options for the following reasons:

AIP, in contrast to PMR, may be reviewed and adjusted periodically so reducing the risk that multiplex licensees would be over- or under- charged. As more information about the opportunity cost of the spectrum becomes available, prices could be adjusted during the duration of the licence. PMR would not allow this level of flexibility.

⁹ 'Future pricing of spectrum used for terrestrial broadcasting – A Statement' Ofcom, June 2007, p.26 <http://www.ofcom.org.uk/consult/condocs/futurepricing/statement/statement.pdf>

While PMR would have the potential advantage of allowing us to capture the full value of a licence (the value that a licensee might have been prepared to pay to hold the licence), it could reduce licence holders' incentives to maximise certain revenues. PMR payments are set as a rate, not a price, so the amounts payable would vary depending on the licensee's ability to generate multiplex revenue. Therefore, a licensee who took steps to carry more videostreams, or to carry more profitable services, that could pay more for carriage, could pay more than another licensee for the use of the same amount of spectrum.

In addition, as PMR is only payable on multiplex revenue, licensees could have incentives to maximise other revenue sources in preference to multiplex revenue, leading to a possible distortion of their commercial priorities and a resulting potential reduction in the overall benefits available to society.

Ofcom has previously confirmed its intention that AIP should not be applied before 2014. It follows that the holders of multiplex licences B,C and D will not be subject to any charges, either AIP or PMR, until after 2014, because their current licences, which have no PMR, will run until then. Our preference would be not to impose PMR only on Muxes A and 2 for the years 2010-2014.

3.28 The following tables present the advantages and disadvantages of each option.

Option 1	Advantages	Disadvantages
<p>PMR: Zero rate, or no rate specified, throughout the duration of the licence.</p> <p>AIP: To be applied from 2014 onwards.</p>	<ul style="list-style-type: none"> • Certainty for licensees – they will know from the outset that they will not face any charge until 2014. • No need to adjust application of AIP to take PMR rate into consideration. • AIP could accurately reflect the opportunity cost of spectrum from the end of 2014 for all licensees. • AIP would give flexibility in setting appropriate pricing levels. Ofcom would be able to adjust pricing levels periodically. • No effect on multiplex licence holders' incentives in choosing where to invest to increase "multiplex revenues" or other revenues. • All multiplex licence holders would face charges set on the same basis, at the same time. 	<ul style="list-style-type: none"> • This scenario could potentially lead to a gain for the licensees, equivalent to the spectrum value for 2010-2014; and any value additional to the spectrum value from 2014 onwards. • However, in light of our previous decision not to impose AIP before 2014, the licensees' saving in respect of the spectrum value is already established policy. The additional gain – of any value resulting from the licences that is not related to the access to spectrum, is unknown.

Option 2	Advantages	Disadvantages
<p>PMR: Set rate or rates throughout the duration of the licence that would take into account our plans to implement AIP from the end of 2014.</p> <p>AIP: To be applied from 2014</p>	<ul style="list-style-type: none"> Rates could potentially be set which would capture the full value of licences. 	<p><i>General PMR disadvantages:</i></p> <ul style="list-style-type: none"> Difficulty of predicting what value other than spectrum value will be in these licences in later years. The incentive for licensees to maximise multiplex revenues would be reduced; greater multiplex revenues would lead to greater payments. <p><i>Disadvantages of option 2:</i></p> <ul style="list-style-type: none"> Inflexibility of PMR, after the licence is awarded. Inaccurate calculations now could lead to over- or under-charging in future. The licensees of Multiplexes A and 2 would be subject to charges from 2010 to 2014, four years before the remaining licensees.

Option 3	Advantages	Disadvantages
<p>PMR: Zero rate now, positive rate later.</p> <p>AIP: To be applied from 2014</p>	<ul style="list-style-type: none"> All licensees would face charges at the same time. 	<ul style="list-style-type: none"> See Option 2 for general disadvantages of PMR. <p><i>Disadvantages of option 3:</i></p> <ul style="list-style-type: none"> Difficulty in adjusting PMR, after the licence is awarded, to take AIP or other charges into consideration. Inaccurate calculations could lead to over- or under-charging. Difficulty in setting a PMR rate in 2009 for Muxes A and 2 which would accurately reflect the non-spectrum value in the licences for the period

		<p>2015-2022. Likely that estimates made so far in advance would be inaccurate.</p> <ul style="list-style-type: none"> PMR rates for the remaining licensees would not be determined until 2014 when more information about the post-DSO DTT market will be available. It is likely that these rates would be more accurate. The licensees of Mux A and 2 may, therefore, be subject to less accurate rates.
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Option 4	Advantages	Disadvantages
<p>PMR: Positive rate now, zero rate from 2014.</p> <p>AIP: To be applied from 2014.</p>	<ul style="list-style-type: none"> Avoids complication of adjusting AIP after 2014. Depending on how PMR is set, it could capture the value of spectrum and any other value, or just non-spectrum value for 2010-2014. 	<ul style="list-style-type: none"> See option 2 for general disadvantages of PMR. <p><i>Disadvantages of Option 4:</i></p> <ul style="list-style-type: none"> If PMR is set to capture spectrum and non-spectrum value of licence: Muxes A and 2 could end up being charged for their spectrum use while the others were not. This is not consistent with Ofcom's policy that licensees in the same class should face spectrum charges set on the same basis. If PMR is set to capture only non-spectrum value: Muxes A and 2 would be charged in respect of this value from 2010 -2014, while others would not.

Question 2: Do you agree with our preference for no PMR, in light of our intention to charge AIP for spectrum used for broadcasting?

Section 4

Interaction with other policy proposals

The project to consider options for reorganising DTT services and upgrading one of the six multiplexes

- 4.1 We have been considering, in consultation with multiplex operators and the broadcasters involved, re-organisation of the use of the existing DTT multiplexes, to enable one of them to be upgraded to MPEG-4 and DVB-T2. This would increase capacity and hence facilitate the introduction of HD on DTT.
- 4.2 This project is not directly related to the renewal of these two licences. Depending on the outcome of this separate project, we may make changes to conditions in one or more multiplex licences. This will be considered as a separate matter in the consultation on multiplex reorganisation.

Next Steps

Timing

5.1 The key dates in the process have been set by statute, and by Ofcom under statute:

	Opening date for applications	Closing date for applications	Licence expiration date
Mux A	15 November 2006	15 February 2009	15 November 2010
Mux 2	19 December 2006	19 March 2009	19 December 2010

5.2 There is no statutorily specified timetable for inviting or assessing applications. It is, therefore, the licensees' decision if and when they wish to submit an application before the stated end date.

5.3 As indicated in Section 2, each licence holder may submit an application for renewal four years prior to the original expiration date of its licence. Given that Multiplex A and Multiplex 2 will expire in 2010 the period for renewal has already begun. Therefore, the licensees of Multiplex A and Multiplex 2 may submit applications when they wish.

5.4 However, it is advisable that licensees wait until the outcome of this consultation process has been completed. The statement resulting from this consultation will indicate to licensees whether or not Ofcom intends to:

- change coverage related aspects of Mux licences;
- require licensees to promote, or assist, the acquisition of receiving equipment;
- impose Additional payments, in the form of PMR in the renewed licensing period.

Once these decisions have been made, licensees will be in a position to submit applications bearing these issues in mind.

5.5 For consultations such as this one, which, whilst containing important policy proposals, will be of interest to a limited number of stakeholders who will be aware of the issues, we normally consult for 6 weeks. We have added an additional 2 weeks to this timetable to allow for the Christmas/New Year holiday period.

5.6 We hope to complete the consultation process by 17 January 2008 and publish a statement in shortly afterwards. We expect to invite, and receive renewal applications during 2008.

5.7 It is important to note that the Secretary of State retains the right to decide these issues differently from Ofcom's proposals and decisions. We hope that this consultation will help to inform licensees and provide the Secretary of State with relevant information for his decisions.

Annex 1

Responding to this consultation

How to respond

- A1.1 Ofcom invites written views and comments on the issues raised in this document, to be made **by 5pm on 17 January 2008**.
- A1.2 Ofcom strongly prefers to receive responses using the online web form at <http://www.ofcom.org.uk/consult/condocs/tvmux/>, 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 3), to indicate whether or not there are confidentiality issues. This response coversheet is incorporated into the online web form questionnaire.
- A1.3 For larger consultation responses - particularly those with supporting charts, tables or other data - please email DTTmuxrenew@ofcom.org.uk attaching your response in Microsoft Word format, together with a consultation response coversheet.
- A1.4 Responses may alternatively be posted or faxed to the address below, marked with the title of the consultation.
- Judith Ross
Floor 3
Spectrum Policy Group
Riverside House
2A Southwark Bridge Road
London SE1 9HA
- Fax: 020 7981 3029
- A1.5 Note that we do not need a hard copy in addition to an electronic version. Ofcom will acknowledge receipt of responses if they are submitted using the online web form but not otherwise.
- A1.6 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

- A1.7 If you want to discuss the issues and questions raised in this consultation, or need advice on the appropriate form of response, please contact Judith Ross on 020 7981 3029.

Confidentiality

- A1.8 We believe 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, ideally on receipt. If you think your response should be kept confidential, can you please specify what part or whether

all of your response should be kept confidential, and specify why. Please also place such parts in a separate annex.

- A1.9 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and will try to respect this. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A1.10 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's approach on intellectual property rights is explained further on its website at <http://www.ofcom.org.uk/about/accoun/disclaimer/>

Next steps

- A1.11 Following the end of the consultation period, Ofcom intends to publish a statement in April/May 2008.
- A1.12 Please note that you can register to receive free mail Updates alerting you to the publications of relevant Ofcom documents. For more details please see: http://www.ofcom.org.uk/static/subscribe/select_list.htm

Ofcom's consultation processes

- A1.13 Ofcom seeks to ensure that responding to a consultation is easy as possible. For more information please see our consultation principles in Annex 2.
- A1.14 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 . 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, who are less likely to give their opinions through a formal consultation.
- A1.15 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
Sutherland House
149 St. Vincent Street
Glasgow G2 5NW

Tel: 0141 229 7401
Fax: 0141 229 7433

Email vicki.nash@ofcom.org.uk

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 usually 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 in plain English. 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 plain English Guide for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.

A2.5 We will consult for up to 10 weeks depending on the potential impact of our proposals.

A2.6 A person within Ofcom 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. Ofcom's '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.

After the consultation

A2.8 We think it is important for everyone interested in an issue to see the views of others during a consultation. We would usually publish all the responses we have received on our website. In our statement, 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 and good regulatory practice, we will publish all consultation responses in full on our website, www.ofcom.org.uk.
- A3.2 We have produced a coversheet for responses (see below) and would be very grateful if you could send one with your response (this is incorporated into the online web form if you respond in this way). This will speed up our processing of responses, and help to maintain confidentiality where appropriate.
- 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 coversheet 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 via the online web form which incorporates the coversheet. If you are responding via email, post or fax you can download an electronic copy of this coversheet in Word or RTF format from the 'Consultations' section of our website at www.ofcom.org.uk/consult/.
- A3.5 Please put any parts of your response you consider should be kept confidential in a separate annex to your response and include your reasons why this part of your response should not be published. 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

Please tick below what part of your response you consider is confidential, giving your reasons why

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 not to be published, 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 that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

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Name

Signed (if hard copy)

Annex 4

Consultation questions

Question 1: Do you agree that the coverage obligations on Multiplex 2 and Multiplex A should remain the same as previously consulted on, confirmed and set in their current licences?

Question 2: Do you agree with our preference for no PMR, in light of our intention to charge AIP for spectrum used for broadcasting?

Annex 5

Impact Assessment

Introduction

A5.1 As we do not propose to make any changes to licensees' coverage obligations or their obligations to assist the acquisition of digital equipment, we have not assessed the impact of these aspects of the licences. However, as we are required to make a choice in respect of Additional Payments, we have conducted an impact assessment of the Additional Payment options available to us.

Ofcom's policy objective

A5.2 Ofcom's objective is to select an additional payment option, which will maximise consumer and citizen welfare. In doing so we are required to have regard to good regulatory practice and principles, including those under which regulation should be proportionate, consistent and targeted only at cases in which action is needed.

Options considered

Option 1	Advantages	Disadvantages
<p>PMR: Zero rate, or no rate specified, throughout the duration of the licence.</p> <p>AIP: To be applied from 2014 onwards.</p>	<ul style="list-style-type: none"> • Certainty for licensees – they will know from the outset that they will not face any charge until 2014. • No need to adjust application of AIP to take PMR rate into consideration. • AIP could accurately reflect the opportunity cost of spectrum from the end of 2014 for all licensees. • AIP would give flexibility in setting appropriate pricing levels. Ofcom would be able to adjust pricing levels periodically. • No effect on multiplex licence holders' incentives in choosing where to invest to increase "multiplex revenues" or other revenues. • All multiplex licence holders would face charges set on the same basis, at the same time. 	<ul style="list-style-type: none"> • This scenario could potentially lead to a gain for the licensees, equivalent to the spectrum value for 2010-2014; and any value additional to the spectrum value from 2014 onwards. • However, in light of our previous decision not to impose AIP before 2014, the licensees' saving in respect of the spectrum value is already established policy. The additional gain – of any value resulting from the licences that is not related to the access to spectrum, is unknown.
Option 2	Advantages	Disadvantages
<p>PMR: Set rate or rates throughout the duration of the licence that would take into account our plans to implement AIP from the end of 2014.</p> <p>AIP: To be applied from 2014</p>	<ul style="list-style-type: none"> • Rates could potentially be set which would capture the full value of licences. 	<p><i>General PMR disadvantages:</i></p> <ul style="list-style-type: none"> • Difficulty of predicting what value other than spectrum value will be in these licences in later years. • The incentive for licensees to maximise multiplex revenues would be reduced; greater multiplex revenues would lead to greater payments.

		<p><i>Disadvantages of option 2:</i></p> <ul style="list-style-type: none"> • Inflexibility of PMR, after the licence is awarded. Inaccurate calculations now could lead to over- or under-charging in future. • The licensees of Multiplexes A and 2 would be subject to charges from 2010 to 2014, four years before the remaining licensees.
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Option 3	Advantages	Disadvantages
<p>PMR: Zero rate now, positive rate later.</p> <p>AIP: To be applied from 2014</p>	<ul style="list-style-type: none"> • All licensees would face charges at the same time. 	<ul style="list-style-type: none"> • See Option 2 for general disadvantages of PMR. <p><i>Disadvantages of option 3:</i></p> <ul style="list-style-type: none"> • Inflexibility of PMR, after the licence is awarded. Inaccurate calculations now could lead to over- or under-charging in future. • Difficulty in setting a PMR rate in 2009 for Muxes A and 2 which would accurately reflect the non-spectrum value in the licences for the period 2015-2022. Likely that estimates made so far in advance would be inaccurate. • PMR rates for the remaining licensees would not be determined until 2014 when more information about the post-DSO DTT market will be available. It is likely that these rates would be more accurate. The licensees of Mux A and 2 may, therefore, be subject to less accurate

		rates.
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Option 4	Advantages	Disadvantages
<p>PMR: Positive rate now, zero rate from 2014.</p> <p>AIP: To be applied from 2014.</p>	<ul style="list-style-type: none"> • Avoids complication of adjusting AIP after 2014. • Depending on how PMR is set, it could capture the value of spectrum and any other value, or just non-spectrum value for 2010-2014.. 	<ul style="list-style-type: none"> • See option 2 for general disadvantages of PMR. <p><i>Disadvantages of Option 4:</i></p> <ul style="list-style-type: none"> • If PMR is set to capture spectrum and non-spectrum value of licence: Muxes A and 2 could end up being charged for their spectrum use while the others were not. This is not consistent with Ofcom’s policy that licensees in the same class should face spectrum charges set on the same basis. • If PMR is set to capture only non-spectrum value: Muxes A and 2 would be charged in respect of this value from 2010 -2014, while others would not.

Ofcom’s preferred option

5.8 Our preferred approach is **Option 1**, setting a zero PMR rate for the entire duration of the licence, and relying on AIP as the sole pricing mechanism, starting from the end of 2014 when the remaining multiplex licences will expire.

5.9 We have selected this option for the following reasons:

- AIP, in contrast to PMR, may be reviewed and adjusted periodically reducing the risk that multiplex licensees would not be over- or under- charged. PMR would not allow for this level of flexibility.
- While PMR would allow us to capture the full value of a licence, (the value that a licensee might have been prepared to pay to hold the licence), it would reduce licence holders’ incentives to maximise their revenues. For example, a licensee who took steps to carry more videostreams, or to carry more profitable services, that could pay more for carriage, would pay more for its use of the same amount of spectrum than another licensee.
- In addition, as PMR is only payable on “Multiplex Revenues”, licensees would have incentives to maximise other revenue sources leading to a possible distortion of their commercial priorities.

- Ofcom has previously confirmed its intention that AIP should not be applied before 2014. It follows that the holders of multiplex licences B,C and D will not be subject to any charges, either AIP or PMR, until after 2014, because their current licences, which have no PMR will run until then. In the circumstances, our preference would be not to impose PMR on Muxes A and 2 for the years 2010-2014.