



Ofcom's Second Public Service Broadcasting Review

Phase 2 – Preparing for the digital future

- 1 The NUJ welcomes the opportunity to respond to the latest phase of the PSB review consultation. The NUJ represents 35,000 journalists in the UK working across all sectors of the media and in particular in commercial and non-commercial public service broadcasters and other commercial broadcasters.
- 2 The response to this phase of the consultation should be taken in conjunction with our response to the previous phase. We have therefore limited our comments to the direct questions posed in phase 2.

Models

PSB beyond the BBC and appropriate models Section 4, questions 1 & 2

- 3 The NUJ believes firmly that the BBC should remain the cornerstone of public service broadcasting in the UK – and it alone should be in receipt of the licence fee – but that there should also be public service provision and funding beyond the BBC.
- 4 In the first instance this should be across all existing public service broadcasters. We welcome the outcome of Ofcom's quantitative study assessing the value of public service programming on ITV1, Channel 4 and Five, which indicates that audiences "believed the benefits of maintaining public service provision beyond the BBC outweighed the costs to them".

- 5 Despite the change in viewing habits public service broadcasters remain by far the most dominant force in the television market – we must maintain the quality, range and reach which has made them central to the broadcasting environment.
- 6 Of the three models subject to consultation we believe the enhanced Evolution model represents the best (although not perfect) choice. It builds on the existing infrastructure and capabilities of existing PSB institutions, maintains a plurality of providers, especially in respect of news for the nations and regions and takes advantage of the economies of scale and mass market reach of existing public service broadcasters. It meets the majority of the effectiveness tests set out by Ofcom, in particular in relation to reach and impact; plurality; value for money; and audience support.
- 7 However, it is vital further refining of such a model builds in sustainable support/funding in respect of the nations and regions and the provision of regional and local news, current affairs and non-news programming, all of which are highly valued by audiences. In any enhanced Evolution model it is important there is strong provision for local news and not just regional news. For example, the current offering on ITV, including opt-outs, provides a degree of local coverage that will simply not be provided under the proposed new regions.

The role of broadcasters beyond the BBC
Section 4, questions 3 & 4

- 8 The model should also be refined to enable existing PSB broadcasters to offer their services across a wider number of platforms. This is particularly important in respect of Channel 4 as set out in Next on 4.
- 9 It is also important governance mechanisms are robust enough to ensure those in receipt of public subsidy/funding are accountable and that there are clear enforcement mechanisms to enable regulators to ensure that in return for such subsidy public service purposes are met.
- 10 Whilst this model would require additional funding there is clear support of between 74% and 78% within Ofcom's public opinion research, showing that people would be willing to pay more towards PSB if there is clear connection with the delivery of PSB programming, particularly in relation to regional and local news.
- 11 We would support Channel 3 being offered as five nations-based licences, with strong and appropriate obligations to the nations and regions attached. In the event that Channel 3 licences are restructured it is important existing commitments to the regions are maintained and there is

- sufficient ability to scrutinise the licence performance and budgets provided to the regions.
- 12 Channel 4 should have an extended remit to innovate and provide distinctive UK content across platforms. We remain concerned that direct funding would potentially undermine its ability to be editorially independent and that being forced to seek contested funding may also subject Channel 4 to editorial judgements made by others. We therefore believe in respect of Channel 4 other funding solutions are more appropriate which we set out in response to questions on funding later on.
 - 13 Ofcom stated in phase one of the PSB Review that Teletext is more popular on analogue than on digital, because of slower speeds and a lack of content on the digital service. Effort should therefore be made to improve the speed and range of content on digital by maintaining and strengthening PSB obligations rather than removing them. Commitments on regional news pages should be maintained (regardless of ITV commitments if these are reduced). We believe intervention is still of value in this market and that without regulation there will be a decline in the range of content provided.
 - 14 After 2014 existing public service broadcasters, including Teletext, Five and ITV1 should retain public service broadcasting commitments. Such a model may require further investigation in to post 2014 funding.

Competitive funding

Section 4, question 5

- 15 We believe contested or competitive funding models are an inefficient way to deliver the core public service broadcasting objectives. In particular they lack the economies of scale an institutional model can deliver, there are more likely to be commercial conflicts of interest and administering such a system requires a new funding authority, which will add costs and potentially a new layer of bureaucracy, diverting money from programme-making.
- 16 We also have concerns about references in the phase 2 document to efficiencies that can be made through a competitive funding process. Quality of provision will inevitably suffer in a situation where providers are being expected to outbid each other in relation to their “efficient” delivery of a service. Such an approach is likely to see the development of a tick-box mentality, with providers looking to drive costs down to the bare minimum that would enable them to meet any specific obligations that are laid down. This would do nothing to maintain or improve quality. Evidence from other sectors shows that quality of service tends to suffer where bidders are expected to compete in this way.

- 17 Whilst it is important to ensure mechanisms are in place to ensure that public funding and/or subsidy is spent efficiently, a competitive funding model for the provision of core public service television objectives would drive down quality and see an erosion of commitment to long-term public interest goals.

Long-term: nations and regions

Providing for the nations and regions

Section 5, questions 1 & 2

- 18 We believe the institutional approach to allocating funding for direct PSB commitments provides the greatest clarity and accountability and economically is the most efficient. There are however other possible funding mechanisms – tax relief, industry levies, gifted spectrum, use of the spectrum available outside of the auction regime and/or spectrum charging for those not delivering PSB – which we believe could also enhance the level of public service broadcasting and may help encourage new entrants both at a local, regional or national level, alongside existing public service broadcasters.
- 19 We agree that news for the nations and regions, provided by more than one supplier, is highly valued by audiences and fulfils a key public service broadcasting purpose. However, we also believe the same is true of local news and Ofcom's own research has consistently shown this to be the case. The phase 1 survey showed 78% of people would like the main channels to show local news.
- 20 None of the three refined models for the nations and regions set out in phase 2 is able to deliver content with the same reach and impact achieved today by the existing model. Efforts should therefore be focused on how best to support the existing provision through additional funding mechanisms.
- 21 Of the three the refined Evolution model best fits the picture with five Channel 3 licences with appropriate obligations in the nations and regions, including both regional and local news. We would be against a restructuring, which would enable there to be a separate provider of news for ITV. Only ITV has the scale and infrastructure to provide news across the nations and regions and our experience of the separate news provider with ITN is that the value of the contract has been consistently eroded and underbid thereby leading to cuts, which are undermining the ability to maintain quality.

- 22 In addition, the practical process towards any such restructuring would be a complicated one. If any moves in this direction were to be made, it would be essential to ensure that employees would have the right to be transferred to the new provider under the TUPE transfer of undertakings rules, which govern employment rights in these situations.

Local content services
Section 5, question 3

- 23 We welcome Ofcom's interest in greater provision of local public service content. Any such provision however must be *in addition* to maintaining existing provision. We are therefore at a loss to square this with Ofcom's green light for ITV to significantly reduce its local TV services – a key element of PSB provision in the UK.
- 24 The decision by the BBC Trust to reject proposals for BBC local video services was a missed opportunity that could have seen greater investment in local journalism. It comes at a time when most local media organisations, many of which have extracted multimillion-pound profits out of the industry over the last fifteen years, are making massive cutbacks to editorial resources.
- 25 In order not just to maintain but to strengthen public service content provision in the UK, in particular in those areas currently inadequately served by existing PSB broadcasters, Ofcom should consider whether additional funding/subsidy for expanded provision for a range of PSB, in particular local news and news and current affairs for the devolved nations and on a range of platforms is possible. Any such moves should be in addition to existing public service broadcasting provision. They would also need to be accompanied by clear and strong guarantees around investment levels and quality to ensure that the recipients of public finances act in the public interest.

Funding

Section 6, questions 1, 2 & 3

- 26 Ofcom have identified a potential shortfall in commercial provision of funding for existing PSB commitments of between £145m and £235m by 2012 and of between £170 m and £280m by 2015.
- 27 Whilst the sums appear large in relation to the public purposes of PSB they represent value for money in respect of the amount of public subsidy required.

- 28 There are a number of possible funding mechanisms. No one mechanism provides the whole answer. Just as there should be plurality of provision so it is likely there will need to be a plurality of funding mechanisms.
- 29 It is clear a mixed funding portfolio may be needed. Central to that will be making maximum use of existing regulatory assets alongside additional funding mechanisms. Among them:
- access to DTT spectrum, especially in respect of provision of HD services
 - expanding DTT capacity
 - increasing advertising minutage allowances
 - an industry levy/retransmission levies – see appendix
 - EPG Prominence – estimated to be worth £30m
 - reserved use of cleared spectrum
- 30 We have consistently argued that spectrum is a public resource, and this precious resource should be used to help to fulfil public policy purposes. A market based approach to allocation or sale of spectrum will not be in the best interests of the citizen or consumer. The primary beneficiaries will be large-scale commercial companies. If a market philosophy is followed, only major organisations, such as transnational enterprises will have sufficient capital to compete. These bidders will inevitably have a European or global imperative and will only focus on the UK market in the context of wider geographical interests or ambitions. Such an outcome will result in less choice for citizens and less local innovation, as, amongst other things, it will discourage small companies from entering markets.
- 31 We believe the case for intervention in the management and allocation of spectrum is proven. Ofcom itself has acknowledged this in its attitude to interleaved spectrum and the case of PMSE usage (See Ofcom Statement, Digital Dividend Review, Band manager award 12 November 2008).
- 32 Similarly, the current system for allocation of radio licences for analogue services considers applications based on a set of criteria which includes the provision of news services.
- 33 The shift from an analogue to a digital world is a change of technology; it does not require a change in ideology.
- 34 While digital switchover means that the value of access to analogue broadcast spectrum is in decline, it is estimated that privileged access to DTT will retain some value for PSBs. Ofcom estimates the value of gifted spectrum allocated to the commercial PSBs (namely, primarily ITV plc, stv, UTV, Channel 4 and Five) to be around £120 million in 2012/3

(Ofcom, 2008), although this could clearly be enhanced were more spectrum to be made available to PSBs.

- 35 This value is retained in part by the fact that the DTT multiplex capacity allocated to commercial PSBs will reach 98.5 per cent of the UK population at DSO, compared to 90 per cent for commercial DTT multiplexes.
- 36 Responses to phase one of Ofcom's PSB review showed support for waiving costs of accessing spectrum due to be introduced in 2014 under the proposed Administered Incentive Pricing (AIP) regime. We support such a move and research shows the use of spectrum retains widespread support amongst audiences. We also believe that HD is likely to provide substantial additional value to the DTT platform. We believe there should be an urgent review of proposals for spectrum auctions to ensure that a key mechanism that could help deliver PSB objectives is not lost ahead of final decisions on future funding.
- 37 There is still debate as to the extent of the value of regulatory assets, in particular because it is difficult to judge the market value of spectrum post-switchover. However, in the event that regulatory assets do not provide the whole solution, they could be offered in addition to other funding mechanisms, including the option of industry levies, to meet the funding shortfalls.
- 38 We agree that any new funding mechanism(s) would require robust accountability and governance processes that ensure transparent, accountable and efficient use of DTT assets.
- 39 We remain strongly opposed to any form of 'top-slicing' the licence fee. Top-slicing would undermine the BBC's ability to continue to provide the same level, quality and depth of PSB programming. It would also threaten to undermine the universality of BBC services by pushing it further towards adopting commercial solutions to meeting its own funding gap. Top-slicing represents the rob Peter to pay Paul approach which does nothing to strengthen PSB provision.
- 40 In addition such an approach would:
- end the unique link between the licence fee payer and the BBC and erode public support for the core licence fee;
 - require new accountability mechanisms to be put in place for any new recipients;
 - risk, if given to commercial broadcasters, the subsidisation of programmes that might have been made anyway and wasting money on new mechanisms;

- mix advertising revenue and public funding at a UK level, potentially weakening commercial incentives and advantaging some commercially funded broadcasters over others.

- 41 The so-called “switchover surplus” was awarded as part of the licence fee settlement in order to ensure the BBC carry out clearly defined public purposes in respect of digital switchover. At the point of digital switchover there are clearly significantly more such public purposes the BBC should be charged with taking a leading role in – for example developing new digital services, widening access to broadband services, increasing coverage of DAB digital radio.
- 42 As soon as the so-called “switchover surplus” is made available to others it simply becomes a new form of contestable funding with Channel 4 and the BBC competing against each other for a share of the licence fee.
- 43 There is a clear importance of maintaining a mixed funding economy in PSB in order to maintain structural plurality. Recent debates around standards, moral and social responsibility indicate that public expectations are arguably, and perhaps rightly, higher when it comes to the BBC because of its direct link to public funding. Extending this mechanism to other providers is likely to impact their ability to be challenging; this is a particularly acute concern when it comes to the output of Channel 4 for example which may find its ability to take risks tempered should top-sliced funding be switched to this channel.
- 44 For many of the same reasons we are opposed to a major expansion of direct funding.
- 45 Audiences whilst supportive of the use of gifted/discounted spectrum for those providing public service content were also keen to ensure that the broadcasters would spend the exact amount equivalent to the spectrum benefits of doing so. In particular we believe Ofcom should have extended powers to scrutinise budgets and make an assessment of the efficiency of the use of regulatory assets/other forms of funding and subsidy.
- 46 In respect of Channel 4 we would be opposed to additional direct funding but believe that a combination of partnership arrangements with the BBC and use of regulatory assets as above, combined with tax relief in respect of certain types of UK-produced programmes and/or the use of a share of an industry levy could meet the £60-100m additional funding requirement set out by Ofcom and would be sustainable in the long term.
- 47 Whilst we believe there are useful partnerships between the BBC and Channel 4 in terms of the exploitation of rights overseas we are opposed

- to Channel 4 being given a stake in BBC Worldwide. We believe firmly Channel 4 should remain in public ownership.
- 48 In order to better assess which mechanisms are appropriate further research needs to be carried out.
- 49 We also believe further research should be carried out on industry levies. An analysis of the use of levies in Europe and their potential in the UK would be to provide a broader range of options. In Ofcom's audience research in *assessing the value of public service programming on ITV1, Channel 4 and Five* an industry levy was the most popular option, favoured by 50%. The IPPR, BECTU and NUJ have done some further work on industry levies set out in Appendix 1 but we believe Ofcom should commission further work on the levy option.
- 50 We are also keen to see further work done on the BBC Partnerships approach. In its outline form we believe there are useful additional mechanisms for providing support/subsidies to other PSB providers. We do however have, on the information available at this stage, serious concerns about the BBC's proposal to "*explore ways of making the BBC's regional and local news materials available to other outlets*". Such a move may have a major impact on jobs, investment in news by other providers and most importantly the quality and plurality of news provision, which according to Ofcom's own research is greatly valued by audiences who recognize the different approach and tone of providers.

Regulatory decisions for the short-term

Section 7, question 1

- 51 We recognise that there are significant challenges for PSB providers at the current time but believe these are over-estimated. We believe Ofcom have too readily accepted ITV's pleadings and allowed them to make significant changes to their local and regional news and non-news programming which have seriously undermined their PSB provision.
- 52 The latest proposals simply repeat that mistake. They represent a massive withdrawal from ITV's news and non-news commitments and, given that these cuts will almost certainly be irreversible; they inevitably limit the role that ITV can play in the new PSB settlement.
- 53 In particular, we have serious concerns about the decisions made in respects of local news services and the inconsistencies exposed by such decisions. For example, why is Central TV, the second biggest ITV region,

- to be allowed just a 6-minute opt-out? Is it appropriate for viewers to be receiving pre-recorded news bulletins?
- 54 We are also concerned that these cuts will make it easier for ITV management in the future to look for a further reduction in the PSB commitments, given that audiences for regional news will inevitably decline as the local links between programmes and audiences are eroded.
- 55 We are therefore concerned as to the ability of Ofcom to ensure that these changes do not lead to a further erosion of the local and regional news provision on ITV. If any changes are approved, they must be accompanied with clear long-term guarantees that will bind ITV management, irrespective of ownership of the company.
- 56 We are deeply concerned that even before such proposals have received full approval ITV have begun the process of cutting jobs – thereby presenting a fait accompli.
- 57 The importance of public service broadcasting in Northern Ireland cannot be overstated and is evidenced in the public response to the announcement by UTV TV that it was to introduce up to 35 redundancies and to reduce local programme output. It is significant that UTV, in official documentation to the Department of Enterprise, Trade and Employment, specifically identified Ofcom's "decision" to alter the PSB obligations as justification for the redundancies.
- 58 Redundancies and the alternation in programme output are being implemented in advance of publication of the final Ofcom decision and the NUJ has been deeply disappointed at the failure of Ofcom in Northern Ireland to make any meaningful statement on UTV's use of the regulator's proposals to justify redundancies.
- 59 The November 2008 consultation meeting hosted by Ofcom was notable for the insistence by Ofcom that participants should not discuss the short-term or mid-term implications of the PSB review. The engagement and record of that meeting does not therefore reflect the real concerns in respect of Northern Ireland, where the legitimate immediate concern is for the future of employment and editorial standards at UTV.
- 60 These concerns were reflected in the unanimous motion on Ofcom and UTV adopted by the Northern Ireland Assembly on 24 November 2008. The unanimous adoption of this motion and the action of the leaders of all the political parties in Northern Ireland in signing a joint statement calling for deferral of the redundancy programme has a particular significance given the complex political landscape in Northern Ireland.

- 61 BBC Northern Ireland plays an important role in Northern Ireland and should be given the resources to do so. Northern Ireland is unique in the high number of viewers who receive television programmes from the Republic of Ireland, including RTE and TG4, the Irish language station.
- 62 UTV however holds a special place because it is indigenous to Northern Ireland. The acknowledged excellence of local output, notably in the area of news, current affairs and sport, is a matter of pride to UTV staff. The decision to cease production of the signature current affairs programme, Insight, on 1 December is reflective of a move away from investigative journalism and underlines our concern that new minimum PSB requirements will lead to a diminished service.
- 63 Northern Ireland is a complex society. The social, cultural, political and linguistic landscape is different from the rest of the United Kingdom. The PSB obligations within Northern Ireland involve telling the new stories of a post-conflict society.
- 64 There is a particular fear that BBC1, with reduced resources, could lessen NI output while UTV would provide a reduced service.
- 65 The dependence of UTV on ITV makes the station vulnerable to external commercial pressures and this underlines the need to ensure that BBC commitments in respect of Northern Ireland are fully honoured.

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