



Local TV decision: proposed change to licence obligations

Statement

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About this document

This document sets out Ofcom's decision on ESTV's request for changes to programming commitments in its London local TV licence. Ofcom has taken the decision not to consent to the request received from ESTV Limited, the provider of the local TV service London Live, to vary the Programming Commitments in its licence.

The Statement outlines the legal framework by which Ofcom must make this decision on ESTV's request. It also sets out the reasons for our decision.

Local TV decision: proposed change to licence obligations

- 1.1 Ofcom received a request on 11 July 2014 from ESTV Limited (“ESTV”), the provider of the local digital television programme service (“L-DTPS”), London Live (“the Licensed Service”), to vary the Programming Commitments in the Licence. Ofcom’s Broadcast Licensing Committee (“BLC”) met to consider ESTV’s request on 9 September 2014.
- 1.2 After considering the request against the statutory grounds set out below and taking account of all the representations made by interested parties in response to Ofcom’s Notice of 25 July 2014, the BLC decided not to consent to the proposed variations for the reasons set out below.

Background

- 1.3 Ofcom awarded ESTV the L-DTPS licence for London (“the Licence”) on 29 January 2013 following a competitive process according to the statutory criteria in the Broadcasting Act 1996 (“the 1996 Act”) for licensing local television¹. There were five applications in total for the Licence. The Licensed Service launched on 31 March 2014.
- 1.4 Condition 5(1) of the Licence² requires ESTV to maintain the character of the Licensed Service for the duration of the Licence in accordance with the Programming Commitments set out in the annex to the Licence. The Programming Commitments are the content obligations which ESTV proposed in its application for the Licence and which it committed to deliver in the provision of the Licensed Service.
- 1.5 On 11 July 2014 Ofcom received a request from ESTV to change the Programming Commitments in the Licence. Ofcom considered that the changes ESTV proposed would result in a departure from the character of the Licensed Service and published a Notice on 25 July 2014 specifying those changes and asking for representations by 26 August 2014 from anyone likely to be affected by the proposed changes. Ofcom received 21 responses, including one confidential response.³
- 1.6 Following the end of the period set out in the Notice for interested parties to respond to Ofcom, Ofcom’s BLC met on 9 September 2014 to consider ESTV’s request and decide whether or not to consent to the proposed departure from the character of the Licensed Service.

Changes proposed by ESTV Limited

- 1.7 The Programming Commitments in the Licence are set out below.

¹ <http://licensing.ofcom.org.uk/binaries/tv/local-tv/applicants/London.pdf>

² http://licensing.ofcom.org.uk/binaries/tv/local-tv/london/London_local_TV_licence.pdf

³ The non-confidential responses can be found here:

<http://stakeholders.ofcom.org.uk/consultations/estv/?showResponses=true>

Programming Commitments for London Live

Programming output	<p>The service will:</p> <ul style="list-style-type: none"> • be an interactive news and entertainment service created in, for and by those who live and work in the Licensed Area; • include rolling news, what's on, business, sport, travel and weather programming available on linear and non-linear platforms and will break into the DTT schedule as necessary; • include current affairs investigations, campaigns and debates will enable local people to influence the agenda through interactive functionality and live contributions; • be a launchpad for local people from every local community with a showcase for videos by aspiring London bands, comedians, filmmakers and other entertainers and community groups; • include live and pre-recorded content about London's events through partnerships with London's cultural organisations; • include archived factual, entertainment and lifestyle programming from London's past; • include hyper-local programming delivered through 33 digital platforms in the Boroughs and City of the Licensed Area, edited by the service's team; and • include a considerable amount of content made in and focused on the Licensed Area, with a small number of programmes selected from elsewhere to add context to exhibitions, events or community celebrations. 		
Hours of local programming per day/week First run: Repeats:	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3 onwards</u>
	8 hours per day	9 hours per day	10 hours per day
	10 hours per day	9 hours per day	8 hours per day
Hours of local programming per day/week in peak-time (18.00-22.30) First run: Repeats:	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3 onwards</u>
	3 hours per day	3.5 hours per day	3.5 hours per day
	1.5 hours per day	1 hour per day	1 hour per day
Hours and scheduling of local news and current affairs programming First run:	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3 onwards</u>
	Mon-Sun: 4.5 hours rolling news per day across breakfast, lunch, early and late evening; current affairs 2 x 30mins per day.	Mon-Sun: 4.5 hours rolling news per day across breakfast, lunch, early and late evening; current affairs 2 x 30mins per day.	Mon-Sun: 4.5 hours rolling news across breakfast, lunch, early and late evening; current affairs 2 x 30mins per day.

Repeats:	Mon-Sun:	Mon-Sun:	Mon-Sun:
	Current affairs x 30 minutes.	Current affairs x 30 minutes.	Current affairs x 30 minutes.

The changes proposed by ESTV were as follows.

- 1.8 Two edits to the programming output (description of the service):
 - i) inserting 'Will endeavour to' at the beginning of the first bullet; and
 - ii) 'Where available will' at the beginning of the seventh.
- 1.9 Removing all commitments to repeated programming:
 - i) In the hours of local programming per day;
 - ii) In the hours of local programming per day in peak-time; and
 - iii) In the hours and scheduling of local news and current affairs.
- 1.10 Adjusting the hours of local programming:
 - i) In the hours of local programming per day, changing from 9 to 8 hours in year two, and from 10 to 8 hours in year three and onwards;
 - ii) In the hours of local programming per day in peak-time, changing from 3 hours to 1 hour in year one, from 3.5 hours to 1 hour in year two, and from 3.5 hours to 1 hour in year three and onwards.

The proposed Programming Commitments, showing all these proposed changes in highlight, are as follows:

Programming Commitments for London Live	
Programming output	<p>The service will:</p> <ul style="list-style-type: none"> • Will endeavour to be an interactive news and entertainment service created in, for and by those who live and work in the Licensed Area; • include rolling news, what's on, business, sport, travel and weather programming available on linear and non-linear platforms and will break into the DTT schedule as necessary; • include current affairs investigations, campaigns and debates will enable local people to influence the agenda through interactive functionality and live contributions; • be a launchpad for local people from every local community with a showcase for videos by aspiring London bands, comedians, filmmakers and other entertainers and community groups; • include live and pre-recorded content about London's events through partnerships with London's cultural organisations; • include archived factual, entertainment and lifestyle

	<p>programming from London's past;</p> <ul style="list-style-type: none"> • <u>Where available will</u> include hyper-local programming delivered through 33 digital platforms in the Boroughs and City of the Licensed Area, edited by the service's team; and • include a considerable amount of content made in and focused on the Licensed Area, with a small number of programmes selected from elsewhere to add context to exhibitions, events or community celebrations. 		
Hours of local programming per day	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3 onwards</u>
First run:	8 hours per day	9 8 hours per day	10 8 hours per day
Repeats:	10 hours per day	9 hours per day	8 hours per day
Hours of local programming per day in peak-time (18.00-22.30)	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3 onwards</u>
First run:	3 1 hours per day	3.5 1 hours per day	3.5 1 hours per day
Repeats:	1.5 hours per day	1 hour per day	1 hour per day
Hours and scheduling of local news and current affairs programming	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3 onwards</u>
First run:	<p>Mon – Sun:</p> <p>4.5 hours rolling news per day across breakfast, lunch, early and late evening;</p> <p>Current affairs 2 x 30mins per day</p>	<p>Mon-Sun:</p> <p>4.5 hours rolling news per day across breakfast, lunch, early and late evening;</p> <p>Current affairs 2 x 30mins per day.</p>	<p>Mon-Sun:</p> <p>4.5 hours rolling news across breakfast, lunch, early and late evening;</p> <p>Current affairs 2 x 30mins per day.</p>
Repeats:	<p>Monday – Sun:</p> <p>Current affairs x 30 minutes.</p>	<p>Monday – Sun:</p> <p>Current affairs x 30 minutes.</p>	<p>Monday – Sun:</p> <p>Current affairs x 30 minutes.</p>

Statutory framework

- 1.11 Under the 1996 Act L-DTPS licences must include such conditions as appear to Ofcom to be appropriate for securing, amongst other things, that the character of the licensed service, as proposed by the licence holder when making the application, is

maintained for the duration of the licence.⁴ As noted above, this requirement is reflected in Condition 5(1) of the Licence and the Programming Commitments set out in the Licence.

- 1.12 The statutory framework also provides that conditions included in an L-DTPS licence may authorise Ofcom to consent to a departure from the character of the service and sets out four grounds which must be met. These grounds are included in Condition 5(2) of the Licence which states that, following the procedure set out in the 1996 Act, Ofcom may consent to a departure from the character of the service, if it is satisfied:
- a) that the departure would not substantially alter the character of the service,
 - b) that the departure would not unacceptably reduce the number and range of the programmes about the area or locality for which the service is licensed,
 - c) that the departure would not unacceptably reduce the number of programmes made in the area or locality for which the service is licensed, and
 - d) that the service would continue to meet the needs of the area or locality for which the service is licensed.⁵
- 1.13 Ofcom may only consent to a departure from the character of an L-DTPS service if it is satisfied that all four of these grounds are met.

Ofcom decision

- 1.14 The Ofcom Board has delegated the discharge of certain of its functions in relation to television and radio broadcast licensing to a committee known as the Broadcast Licensing Committee (“BLC”), chaired by a member of the Ofcom Board. The BLC has responsibility for deciding on the award of, and proposals for significant variations to, L-DTPS licences.
- 1.15 The BLC met on 9 September 2014 to consider ESTV’s request to change the Programming Commitments in the Licence.
- 1.16 Before considering the specific request from ESTV, the BLC noted that this was the first time that it had considered a request to approve a departure from the character of service of an L-DTPS. It also noted that the invitation to apply for L-DTPS licences⁶ published by Ofcom stated that, as the programming commitments would be a binding licence condition, prospective applicants were encouraged to consider very carefully what proposals they could realistically deliver, and that the assessment of applications for the purpose of the licence award decision was based on the applicants’ proposals. The BLC noted that a request containing a number of proposed variations to a licensee’s programming commitments can only be considered on the basis of the whole proposal as put forward by the licensee. The BLC also noted that the request could only be approved if the BLC considered that all of the four statutory criteria set out above were satisfied.

⁴ Section 19(3A)(c) of the 1996 Act as modified by the Local Television Programme Services Order 2012

⁵ Section 19(3B) of the 1996 Act as modified by the Local Television Programme Services Order 2012

⁶ <http://projects/sites/ltv/cons/Documents%20for%20publication/Invitation%20to%20Apply%20for%20an%20L-DTPS%20Licence%20v3.doc>

1.17 The BLC went on to consider ESTV's request against the four grounds set out above, looking at the variations to the Programming Commitments requested by ESTV as a whole. The BLC took account of all the representations made by interested parties in response to Ofcom's Notice of 25 July 2014. After careful deliberation the BLC decided that it was not satisfied that Ground (a) was met for the reasons set out below. Accordingly, as all four grounds must be met and the BLC was not satisfied that Ground (a) was met, the BLC did not consent to ESTV's request to vary its Programming Commitments. However, the BLC went on to consider the other grounds. For the reasons set out below, the BLC also decided it was not satisfied that Ground (b) was met. In relation to Ground (c), the BLC considered that ESTV had not provided sufficiently clear information for the BLC to be satisfied that this ground was met. The BLC decided that it was satisfied that Ground (d) was met, for the reasons set out below.

Ground (a): that the departure would not substantially alter the character of the service

1.18 The BLC noted that, under the requested variation,

- the hours of local programming per day would reduce from 18 hours to 8 hours, including a reduction in the first-run hours in years 2 and 3;
- the local programming per day in peak time would reduce from 4.5 hours to 1 hour, and that this would particularly affect the first-run peak-time hours which would be reduced by 2 hours in year 1 and 2.5 hours in years 2 and 3; and
- in the section headed "Programming Output", the addition of the words "*Will endeavour to*", in relation to the Licensed Service being an interactive news and entertainment service created in, for and by those who live and work in the Licensed Area (as defined in the Licence), and the addition of the words "*Where available will*", in relation to the inclusion in the Licensed Service of hyper-local programming delivered through 33 digital platforms in the Boroughs and City of the Licensed Area, would result in a very significant weakening of these elements of the Programming Commitments, to the extent that it was difficult to see how these could be regarded as meaningful Programming Commitments.

1.19 The BLC noted that it had considered all of these features of the Programming Commitments to be significant and important reasons for the award of the Licence. After careful consideration, the BLC decided that the overall effect of the requested changes would be to substantially alter the character of the service.

1.20 Accordingly, the BLC was not satisfied that Ground (a) was met.

Ground (b): that the departure would not unacceptably reduce the number and range of the programmes about the area or locality for which the service is licensed

1.21 The BLC considered that the changes, taken as a whole, would result in an unacceptable reduction to the number and range of programmes about the area or locality for the Licensed Area. In particular, the BLC was concerned that the proposal

to include the wording “Where available will”, as referred to under Ground (a) above, would remove the obligation to include hyper-local programming delivered through digital platforms in each of the London boroughs. This had been a particularly important factor in the award of the Licence to ESTV.

1.22 Accordingly, the BLC was not satisfied that Ground (b) was met.

Ground (c): that the departure would not unacceptably reduce the number of programmes made in the area or locality for which the service is licensed

1.23 The BLC considered that the overall effect of the changes appeared to be a reduction in the number of programmes made in the Licensed Area, in particular given the proposal to remove the requirement relating to hyper-local programming from the London boroughs and the proposed reduction in the hours of first-run local programming in years 2 and 3 of the Licence. However, the BLC considered that ESTV had not provided sufficiently clear information on the impact of these changes for the BLC to be satisfied that there would not be an unacceptable reduction in the number of programmes made in the Licensed Area.

Ground (d): that the service would continue to meet the needs of the area or locality for which the service is licensed

1.24 The BLC noted that meeting the needs of the area or locality for which the service is licensed is a requirement of all L-DTPS under the statutory framework and that this was an important criterion for Ofcom’s award decision. After careful consideration, the BLC decided that, although in its view the service would not meet the needs of the area or locality to the same extent as a result of the proposed departure from the character of the service, the proposed departure would not result in the service ceasing to meet the needs of the area or locality.

1.25 Accordingly, the BLC was satisfied that Ground (d) was met.

1.26 For the reasons set out above, the BLC did not consent to ESTV’s request to vary its Programming Commitments.