



Television Multiplex Licence Renewal Multiplex B

Statement

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Contents

Section		Page
1	Summary	1
2	Background to the consultation	3
3	Consultation responses	6
4	Next steps in the licensing process	9
Annex		Page
1	Clauses to be removed from the Multiplex B Licence	11

Section 1

Summary

- 1.1 In 2002, Ofcom awarded a licence under the Broadcasting Act 1996 (the “1996 Act” and the “Mux B Licence”) for the operation of digital terrestrial television (“DTT”) multiplex known as Multiplex B to BBC Free-to-View Limited (“BFtV”). This licence is due to expire in November 2014. Under the provisions of the 1996 Act the licensee may apply to renew its licence for a further period of 12 years.
- 1.2 In February 2012, Ofcom received an application from BFTV to renew the Mux B Licence. Under section 16 of the 1996 Act, when considering whether or not to renew a television multiplex licence, Ofcom has to decide whether to require additional obligations relating to: (a) the coverage of the service; and/or (b) promoting the acquisition of digital terrestrial television (“DTT”) receiving equipment. Ofcom also has to decide whether to require the licensee to make additional payments, in the form of a percentage of multiplex revenue.
- 1.3 Following consultation¹ we have decided that it is appropriate to renew the Mux B Licence for a further 12 year period and that we will not require any additional obligations in respect of coverage of the promotion of DTT equipment in the renewed licence.
- 1.4 We have also decided not to require BFTV to pay a percentage of multiplex revenue (PMR) in respect of the Mux B licence upon renewal. This is in light of our stated intention to introduce Administered Incentive Pricing (AIP) as a means of charging for the spectrum used for broadcasting.
- 1.5 Under the Act, the consent of the Secretary of State for Culture, Olympics, Media and Sport (the “Secretary of State”) is required before any renewal or refusal to renew may take effect. The Secretary of State has confirmed that he consents to our approach. He has also confirmed that he will not use his discretionary powers to direct us to set a rate for PMR.
- 1.6 In addition to considering whether to renew the Mux Licence B under section 16 of the 1996 Act, in February 2012 BFTV requested that Ofcom should also consider the removal of certain existing licence requirements related to the promotion of reception equipment which BFTV considered have been successfully achieved. We have decided that, subject to the formal consent of the licence holder in accordance with section 12(2) of the 1996 Act, the renewed BA Licences should be varied to remove these provisions, and for reasons set out in this Statement one further provision. The provisions are as follows:
 - The definitions of “DTT Marketing Plan” and “ServicesCo” contained in Condition 1;
 - The words “through or involving ServicesCo or otherwise” in Condition 11(8);
 - Condition 11(9);
 - Annex A, Part 6;

¹ Television Multiplex Licence Renewal – Multiplex B, Consultation, May 2012, <http://stakeholders.ofcom.org.uk/consultations/mux-b/summary>

- Annex B, Part 1.

Next Steps

- 1.7 We will write to BFtV , the holder of the licence for Multiplex B, to notify them of our decision, in accordance with section 16 of the 1996 Act, to renew their licences for a period of 12 years without requiring additional obligations relating to: (a) the coverage of the service; and/or (b) promoting the acquisition of DTT receiving equipment. We will also not require BFtV to pay a PMR in respect of the Mux B Licence.
- 1.8 Separately, once the renewal process has been completed, we will write to BFtV to formally seek their consent, in accordance with section 12(2) of the 1996 Act, to vary the renewed Mux B Licence so as to remove the provisions set out at paragraph 1.6 above from the renewed Mux B Licence.

Section 2

Background to the consultation

Statutory requirements and background

- 2.1 Under section 16 of the 1996 Act, a television multiplex licence, if granted within six years of commencement of that section, may be renewed, on one occasion, for a period of twelve years beginning on the date on which it would otherwise expire. A 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 The Mux B Licence (one of five² existing DTT multiplex licences) will expire in 2014. In February 2012, BFtV applied for a renewal of the Mux B Licence. BFtV also requested, as set out in more detail at paragraph 2.6, that as part of the renewals process, Ofcom should consider the removal of certain obligations contained in any renewed Licence
- 2.3 This statement sets out Ofcom's decision on how it will deal with BFtV application to renew the Mux B Licence and the removal of certain licence conditions.
- 2.4 Under the 1996 Act, in determining whether or not to renew a television multiplex licence, Ofcom has to reach decisions on certain issues:
- we may require a supplementary 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 require supplementary proposals for the promotion of, or assistance with, the acquisition of equipment capable of receiving digital services in the area.
 - we may require the licensee to make additional payments, in the form of a percentage of multiplex revenue (PMR).
- 2.5 Before confirming any of these decisions, Ofcom requires the consent of the Secretary of State. With regard to any decision on PMR, in addition to his 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.
- 2.6 In addition to considering whether to renew the Mux B Licence under section 16 of the 1996 Act, in February 2012 BFtV requested that in its consultation Ofcom also consider the removal of certain existing licence requirements relating to the promotion of reception equipment on that basis that they will have been successfully achieved. Ofcom was not required to consider the removal of these provisions for the renewal process under section 16 of the 1996 Act. However, as the provisions in question relate to subject matter that we are required to consider for the purposes of section 16(4)(ii) (i.e. whether supplementary proposals for the promotion of, or assistance with, the acquisition of equipment capable of receiving digital services in the area should be required), Ofcom considered it appropriate to

² The other four existing licences have been renewed. Multiplex A and 2 were renewed on existing terms in 2010. Multiplex C and D were renewed in 2012.

deal with the proposed removal of these provisions as part of its consultation on the renewal of the Mux B Licence.

Consultation Proposals

- 2.7 We set out our proposals on these issues in the consultation *Television Multiplex Licence Renewal – Multiplex B*, published in May 2012.³
- 2.8 In relation to coverage, we proposed that BFtV should not be required to submit a new technical plan. Multiplex B is a multiplex which carries HD simulcasts of public service broadcasting channels. Ofcom has stated that “*all three multiplexes which will broadcast public service broadcasting channels (i.e. the so-called “PSB multiplexes” 1, 2 and B) at DSO should aim to achieve similar levels of coverage to all sites being operated for DTT by adopting the same mode and similar levels of power. (The expectation is that these three multiplexes will achieve coverage of about 98.5 per cent of the UK population...)*”⁴. Following completion of DSO, the so-called PSB multiplexes, such as Multiplex B, will be able to provide 98.5% coverage. Therefore, we did not consider that there would be any justification for requiring new technical proposals from the licensee.
- 2.9 We also proposed that BFtV should not be required to submit any new proposals for promoting the acquisition of DTT receiver equipment. We based this on the view that as we approach the end of the DSO process, the take-up of digital television (as of October 2011, 18 million homes use Freeview, with 10.2 million using Freeview as their primary television service) is evidence of widespread consumer knowledge of how digital television operates and the equipment needed to receive digital television.
- Further, we noted that, the current Mux B Licence (with its existing conditions relation to the promotion of the platform) does not expire until the end of 2014 (beyond the expected completion date for DSO) by which time there appears to be little need for such commitments.
- 2.10 In relation to PMR we set out our preferred approach.⁵ This was to set a zero PMR rate for the entire duration of the renewed licence, leaving AIP as the sole option for a future pricing mechanism starting from 2014.
- 2.11 With regard to BFtV’s February 2012 request for Ofcom to consider the removal of the obligations relating to the promotion of, or assistance with, the acquisition of digital receiver equipment and the establishing and functioning of Freeview⁶ Ofcom agreed with BFtV and proposed the removal of the provisions. Our rationale for their removal acknowledged that their inclusion in the original licence related to the DTT landscape at the time of the original licence award and the desire to ensure that the DTT platform was able to promote itself effectively. In recognising that the DTT platform is now sufficiently mature, we explained that we were satisfied that the need to ensure the promotion of the platform through regulatory intervention in the form of licence obligations had now diminished.

³ Consultation Document: http://stakeholders.ofcom.org.uk/binaries/consultations/mux-b/summary/Mux_B_Renewal.pdf

⁴ Ofcom Statement “Switchover related changes to DTT licences”, 7 December 2006, paragraph 2.11, http://stakeholders.ofcom.org.uk/binaries/consultations/dtt_changes/statement/statement.pdf

⁵ http://stakeholders.ofcom.org.uk/binaries/consultations/mux-b/summary/Mux_B_Renewal.pdf pg. 8

⁶ Freeview – the marketing body for the DTT Platform

- 2.12 We also considered that outside of the relationship imposed by the regulatory framework, there already existed a relationship between the licensees and relevant industry bodies on the basis of commercial interests. When considered in the context of the current level of digital television take up and penetration and in the post-switchover era, we explained that we were satisfied that the purpose of this intervention will have been fulfilled by the time of renewal. As such, there was little need for such conditions to be included in the renewed licence.
- 2.13 Having reached this conclusion and as Ofcom is under a statutory duty not to impose, or maintain regulatory burdens which are unnecessary (Section 6 of the Communications Act 2003) we therefore proposed that it is appropriate that these provisions be removed from any renewed licences.
- 2.14 We asked stakeholders for their views on our proposals. Specifically, we invited responses to four questions. The questions, a summary of responses and Ofcom's decisions are set out in Section 3.

Section 3

Consultation responses

Consultation questions and responses

- 3.1 We received responses from Arqiva, BBC, Digital 3and4 Limited, British Sky Broadcasting (“Sky”) and Ms M Hicken. Sky submitted a response that requested that we referred to their response to the consultation for the renewal of Multiplexes C and D. Copies of the non-confidential responses can be found on the Ofcom website.⁷
- 3.2 Respondents generally supported our proposed approach to multiplex licence renewal. Responses to the specific questions asked are set out below.

Question 1: Do you agree that Ofcom should not seek a supplementary technical plan in respect of Multiplex B prior to considering whether or not to renew the Mux B Licence?

- 3.3 All respondents agreed with this approach.
- 3.4 In particular, the BBC considered that it had already shown full commitment to promoting digital television and noted that, other than a desire to extend coverage beyond analogue equivalence, it queried whether any further coverage requirements could be placed on the licence.

Question 2: Do you agree that in renewing the Mux B Licence, it is appropriate not to require supplementary proposals in relation to the promotion of, or assistance with, the acquisition of DTT receiver equipment?

All respondents agreed with our proposal. The BBC noted that it considers that the objectives underpinning the original Freeview marketing plan have been fulfilled and therefore requiring supplementary proposals would be an unnecessary and unfair burden upon the Multiplex B licensee.

Question 3: Do you agree with our preference not to apply a charge for PMR in a renewed Mux B Licence, in light of our stated intention to charge AIP for spectrum used for broadcasting?

- 3.5 Respondents agreed with our preference.
- 3.6 However, while acknowledging this was not a consultation was not on AIP, Arqiva and BFtV expressed serious concerns about the introduction of AIP in general. It is outside the scope of this statement to deal with such concerns. However, Ofcom has already stated its intention to consult more widely on the introduction of any such fees and we will of course engage with all relevant parties at that time.

⁷ Television Multiplex Licence Renewal Consultation responses:
<http://stakeholders.ofcom.org.uk/consultations/mux-b/?showResponses=true>

Question 4. Do you agree that Ofcom should vary any renewed Mux B Licence in order to remove the provisions set out in paragraph 3.21 (of the consultation document)?

- 3.7 With one exception, respondents agreed with our proposed approach. In its response to the consultation on the renewal of Multiplexes C and D, which Sky have referred us to in relation to this consultation, Sky objected to the removal of Condition 11(9) and suggested the removal of Annex A, Part 8 from the multiplex licences and also DTT broadcasters' DTPS and DTAS licences. We responded to Sky's concerns in our January 2012 statement on the renewal of Multiplexes C and D. Sky have not raised any new arguments in this regard and therefore we consider our response, as set out in the January 2012, statement stands.⁸
- 3.8 In its response Digital 3 and 4 Limited, pointing to the completion of DSO across the UK in October this year, noted that there is no longer a requirement for DSO related obligations and suggested that at a minimum Ofcom consider the removal from its Licence of Annex: Part 4 (conditions relating to promoting or assisting the acquisition of equipment), Annex : Part 9 (requirements relating to digital switchover and the DTT clearance programme) and Annex : Part 10 (digital switchover date and timetable). In its response, Arqiva also noted that Arqiva are also keen to note that a wide ranging update of the multiplex licences is warranted to bring them up to date and we are keen to work with Ofcom to ensure that they are current and address existing regulatory arrangements
- 3.9 As set out in our January 2012 statement on the renewal of Multiplexes C and D, once DSO has been completed Ofcom envisages, where appropriate, considering the possibility of undertaking a separate piece of work to remove all provisions that facilitated the implementation of DSO. Ofcom will therefore consider removing these obligations at that time.

General Comments

- 3.10 In its response to the consultation on the renewal of Multiplexes C and D, which Sky have referred us to, Sky raised a number of issues that fall outside of the scope of the multiplex licence renewal process; on that basis it is not appropriate for us to consider them here.
- 3.11 As set out in our January 2012 statement on the renewals of Multiplexes C and D, we are aware that some of the issues raised are of a wider interest to stakeholders. Where we have not already commenced formal engagement to address these matters, it is our intention to consider the scope of the work involved and how we intend to proceed. We will then contact Sky and other stakeholders as appropriate.

⁸ http://stakeholders.ofcom.org.uk/binaries/consultations/television-multiplex-renewals/statement/MuxRenewal_Statement.pdf

Conclusion

- 3.12 Having carefully considered all of the responses to the consultation, we have concluded it is appropriate to proceed with the renewal of the licence for Multiplex B on the basis set out in the consultation document. Specifically, this means that the holder of the Mux B licence, BFtV, will not be required to submit supplementary technical plans with revised coverage proposals or supplementary proposals for the promotion of, or assistance with, the acquisition of DTT receiver equipment. Nor will it be required to pay a PMR for the duration of the renewed licences. The Secretary of State has consented to Ofcom's approach.
- 3.13 In addition, subject to the formal consent of the licence holder, the renewed Mux B Licence will be varied so as to remove the following provisions:
- The definitions of "DTT Marketing Plan" and "ServicesCo" contained in Condition 1;
 - The words "through or involving ServicesCo" in Condition 11(8)
 - Condition 11(9);
 - Annex A, Part 6;
 - Annex B, Part 1.

Section 4

Next steps in the licensing process

Ofcom's decisions

- 4.1 The consultation responses show that those stakeholders who made representations generally agreed with our approach to these issues.
- 4.2 We have now received confirmation from the Secretary of State that he consents to our proposals. In addition, the Secretary of State has confirmed that he will not direct us to set a particular rate of PMR.
- 4.3 Therefore, we have decided to renew the Mux B Licence in accordance with section 16 of the Act, and in particular we have decided:
 - 4.3.1 We will not require the licensee to provide a supplementary technical plan in respect of Multiplex B.
 - 4.3.2 We will not require any supplementary proposals in relation to the promotion of, or assistance with the acquisition of digital television receiver equipment.
 - 4.3.3 In light of our stated intention to charge AIP from 2014, we will set a zero rate for PMR for the duration of the licences.
- 4.4 Separately, Ofcom has also decided to formally seek BFtV's consent, in accordance with section 12(2) of the 1996 Act, to vary the renewed BA Licences so as to remove the following provisions:
 - The definitions of "DTT Marketing Plan" and "ServicesCo" contained in Condition 1;
 - The words "through or involving ServicesCo or otherwise" in Condition 11(8);
 - Condition 11(9);
 - Annex A, Part 6;
 - Annex B, Part 1.

Next Steps

- 4.5 We will write to BFtV the holder of the Mux B Licence to notify them of Ofcom's decision to renew the Mux B Licence for a period of 12 years effective from 17 November 2014.
- 4.6 It is our practice to charge a fee for licence renewals. Ofcom's *Tariff Tables 2011/2012* contains details of the fees payable. In the case of Television Multiplex renewals we set the fee at £25,000.⁹

⁹ http://stakeholders.ofcom.org.uk/binaries/research/Tariff_Tables_2001112.pdf

- 4.7 Once the renewals process has been completed, we will write to BFtV to formally seek their consent to vary the renewed Mux B Licence so as to remove the provisions set out at paragraph 4.4 above from the renewed Mux B Licence.

Annex 1

Clauses to be removed from the Multiplex B Licence

Condition 1

A1.1 Delete the following:

“**DTT Marketing Plan**” means the document referred to in Part 6 of Annex A;

“**ServicesCo**” means the company established pursuant to the Shareholders Agreement or any successor between such parties or any combination thereof with a similar purpose;

Condition 11

A1.2 In Condition 11(8), delete the words “through or involving ServicesCo or otherwise”

A1.3 Delete Condition 11(9) in its entirety as follows:

- (9) The Licensee shall ensure that all persons licensed or authorised to provide a multiplex service or services and all persons providing three or more digital television programme services and/or qualifying services, may participate in ServicesCo on a fair and reasonable basis; and the Licensee shall also ensure that all holders of digital television programme services and digital television additional services licences issued under the 1996 Act receive information concerning ServicesCo’s activities.

Annex A, Part 6

A1.4 Delete Annex A, Part 6 in its entirety, as follows:

- 13.** The Licensee shall use its best endeavours to implement and procure the implementation of the proposals in relation to the promotion and marketing of the Licensed Service and more broadly the development of digital television broadcasting in the United Kingdom otherwise than by satellite, as set out in the DTT Marketing Plan submitted in response to Question A.2 in the Attachment to Part III of the Invitation to Apply and in additional information provided to the Independent Television Commission referred to in Part 5 of this Annex and in Parts 1 and 2 of Confidential Annex B including, in particular, the letters from Crown Castle to the Independent Television Commission dated 19 June, 26 June, 27 June and 2 July 2002, as such Plan may be modified by the parties thereto subject to the prior written consent of Ofcom, such consent not to be unreasonably withheld.

- 14.** Without prejudice to the generality of the foregoing, the Licensee shall:
- (a) establish and maintain a referral service for a national organised aerial and installation service;
 - (b) use all reasonable endeavours to strengthen existing technical collaboration between broadcasters, retailers and manufacturers of digital television receivers and shall, in particular:
 - (i) work with television manufacturers to implement a regime to test that broadcaster interactive service applications work effectively on receivers;
 - (ii) provide transmission capacity sufficient to enable manufacturers to upgrade their receiver software; and
 - (iii) provide Service Information for manufacturers' EPG services including the fuller advance programme applications needed for personal video recorder functions; and shall
 - (c) implement the proposals in the fourth paragraph of the part headed "The Marketing Plan" in section 7 of his Application and in particular:
 - (i) investigate a common kitemark to be awarded to manufacturers selling digital television receivers which meet a minimum functionality specification;
 - (ii) provide a consumer information telephone call centre, with postcode information and related advice on any aerial upgrade needed; and
 - (iii) provide information to manufacturers and retailers on reception and aerial issues.
 - (d) commit a minimum annual expenditure equal to the marketing budgets for the period of the licence as set out in Confidential Annex B;
 - (e) commit subject to the receipt of the additional minimum contributions set out in Confidential Annex B, the minimum annual marketing expenditure for the period of the licence as set out in that Annex; and
 - (f) provide to Ofcom an Annual Report reporting on the expenditure incurred and an assessment of the impact of that expenditure on the digital terrestrial television broadcasting market including any impact data available; and

- (g) establish an appropriate method for measuring and reporting the level of digital terrestrial television receiver take-up and provide quarterly reports to Ofcom on the take-up of digital television and digital terrestrial television receivers.

Annex B, Part 1

A1.5 Delete Annex B, Part 1