

Cover sheet for response to an Ofcom consultation

BASIC DETAILS

Consultation title: **Licensing Local TV**

To (Ofcom contact):

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Representing (self or organisation/s): **ASTRA (GB) Ltd - an SES company**

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

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Name **Mike Chandler**

Signed (if hard copy)



SES RESPONSE TO OFCOM LOCAL TV CONDOC.

19 Mar 2012

Licensing Local TV: Response by SES


1. About SES

1.1 SES is a world-leading satellite operator with a fleet of 50 geostationary satellites. The company provides satellite communications services to broadcasters, content and internet service providers, mobile and fixed network operators and business and governmental organisations worldwide. SES (Euronext Paris and Luxembourg Stock Exchange: SESG) holds participations in Ciel in Canada and QuetzSat in Mexico, as well as a strategic participation in satellite infrastructure start-up O3b Networks. Further information can be found at www.ses.com.

2. General licensing principles

2.1 To date, Ofcom has largely exhibited fairness in its approach to television licensing, providing a regulatory system in which different transmission systems – including satellite, cable, DTT and, increasingly, broadband and IPTV – have been given equal opportunity to compete.

2.2 In its final policy position on local TV (December 2011), “*the Government recognises that use of these platforms will enable local TV to reach more viewers*” [page 18, para 30 of the DCMS statement]. We note with disappointment that Ofcom persists in a view that there is no place for satellite transmission in the plans for local TV.




2.3 The Ofcom consultation document states, “*We anticipate that most if not all local TV services will be broadcast only on DTT via the local TV multiplex*” [page 41, para 6.21]. Services delivered “*only on DTT via the local TV multiplex*” represent in our view a clear policy of favouritism towards one transmission platform. DTT will not provide rural areas or those beyond GI reach with a local TV option. It is, arguably, remoter areas such as these who would most benefit from the provision or targeted local news and better sub-regional programming.

2.4 Satellite transmission could deliver such services to these communities. The concentration on DTT in this consultation does not appear to fit well with Ofcom’s Statutory Duty “*to further the interests of consumers in relevant markets, where appropriate by promoting competition*”. **We would be grateful for an explanation of how Ofcom’s Statutory Duty is being met in the case of local TV.**

3. Subsidisation and State Aid

3.1 SES is extremely concerned that the measures being proposed to support Local TV may be in breach of the principles of undistorted competition of the EC Treaty and the specific regulatory principles underpinning the Commission’s policy on electronic communications market.

3.2 The Commission has stated several times, both in its Communications and in its decisional practice, that “*regulation in this field should neither impose nor discriminate in favour of the use of a particular digital platform such as terrestrial, cable, satellite, or IPTV, thus adhering to the principle of technological neutrality*”. [see, e.g., C(2007) 4286 final, para 43] See Annex 1 below. This means that each platform should in principle compete on its own strengths, and on the basis of its ability to offer the greatest benefits to consumers.



3.3 When a State Aid strengthens the position of an undertaking compared with other competing undertakings, the latter must be regarded as affected by that aid since these two groups of undertakings will not compete on equal terms. The main beneficiaries of the proposals for Local TV – terrestrial network providers - compete with alternative digital network providers, which will not benefit from the same State funding. Competition in the market for provision of digital television network infrastructure is distorted in contravention of EU Commission principles.

3.4 A Member State may grant subsidies to redress a potential market failure in this field. However, the UK must ensure that it refrains from favouring some platforms to the detriment of others. If not, it risks infringing the technological neutrality principle by creating "*unnecessary distortion between technologies or companies*". [see, e.g., DVB-T Berlin-Brandenburg, supra note 3 ¶1133]. See Annex 2 below.

3.5 Therefore, there remain questions as to the legality and validity of the “£25 million towards capital investment” and the “£15 million towards content acquisition” to be provided by the BBC from its allocation of Government funding. The DCMS final policy position (December 2011) acknowledges that State Aid approval may be necessary, and that discussions are underway with the European Commission on this. Yet the Ofcom consultation document does not talk about this at all.

3.6 The FTI study relied on by Ofcom “concluded that although a number of locations could generate more income than they would cost to run, the local TV multiplex overall would almost certainly make a loss in the absence of external funding” [page 16, para 4.13]. It would appear, therefore, that the BBC funding – in effect, central Government funding – is crucial to the viability of the commercial roll-out of local TV.

3.7 Satellite and other forms of broadcasting do not receive support from the Government to fund start-up services like this. **What justification exists for providing preferential treatment to DTT in this new market?**


4. Establishment of a new national broadcaster

4.1 Finally, the DCMS policy statement said, “*If a local service goes off-air for a time, then the multiplex operator can carry on operating the [two, commercial] additional video streams if it so desires*” [page 29, para 78]. The consultation document does not appear to address the issue of the multiplex operator being in a position to exploit relatively low-cost commercial video streams following the failure of a local TV service.

4.2 Since the multiplex operator “*should not make a profit from the local service providers*”, it would appear to have little or no incentive to encourage a new service provider to take on the local TV obligation. Furthermore, Ofcom may face considerable – if not insurmountable – problems in re-issuing a license if the first service provider has failed. **What systems are proposed to prevent the “back-door” creation of a low-cost quasi-national broadcaster?**

5. Conclusion

5.1 The plans for licensing local TV are flawed. They display clear favouritism to DTT over other forms of transmission. They provide Government subsidy to a new commercial service which independent studies suggest is unlikely to be viable without it. They do not appear to “*further the interests of consumers*” in defiance of Ofcom’s Statutory Duties. They may breach both the EU Commission’s regulatory principles and EU State Aid rules. The plans require a major rethink.



5.2 Local TV can be made to work well, and we have strong experience of providing specialist services such as this to our customers. SES would be happy to discuss our concerns further as part of a process to redesign the local TV licensing process to promote consumer interests and to encourage competition and choice.

Annex 1

43. For these reasons, the Commission actively supports digital switchover and has underlined these advantages in the Action Plan eEurope 2005 and in the two Communications relating to the digital switchover quoted above⁶. In its Communication *"i2010 – A European Information Society for growth and employment"*⁷ the Commission has pointed out that the planned switching off of analogue terrestrial television by 2012 will improve access to spectrum in Europe. Regulation should neither impose nor discriminate in favour of the use of a particular digital platform such as cable, satellite, terrestrial or IPTV thus adhering to the principle of 'technological neutrality', which is the case of the present measure. As stated in the Framework Directive, this does not preclude a Member State from taking proportionate steps to promote certain specific services where this is justified, for example digital television as a means for increasing spectrum efficiency.

Annex 2

(133) Apart from such measures on which the Commission has already pronounced itself, Member States may also consider other forms of support provided that the measures do not entail an unnecessary distortion between technologies or companies. Under such conditions, Member States may, for example, consider the granting of: (a) subsidies to consumers for the purchase of digital decoders. Such subsidies should be technologically neutral as described above. In granting subsidies, the authorities may encourage the use of open

standards for interactivity. Open standards enable consumers to benefit from interactive services offered by different operators. Examples of interactive services are electronic programme guides, news search, games or e-commerce. (b) funding for the roll-out of a transmission network in areas where otherwise there would be insufficient TV coverage; (c) financial means to public service broadcasters to enable them to be broadcast via all transmission platforms in order to reach the entire population. In this context, Member States have to set out clearly any obligations on the public service broadcasters as to which transmission platforms should be used; (d) financial support as fair compensation to broadcasters which are required to give up the use of analogue spectrum before the expiration of the licences. The compensation should take into account the actual costs of the switch-over to broadcasters including costs to adapt equipment to digital transmission and to broadcast in another channel/- multiplex where applicable and including spectrum costs. When calculating spectrum costs the granting of digital transmission capacity should be taken into account. Member States will need to provide the evidence that this has been the case.

6. Further information

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