



UNITED FOR LOCAL TELEVISION
Consultation Response

*“Ofcom’s Second Public Service Broadcasting Review – Phase 2”
Ofcom consultation published 25/09/08*

Meeting audience demand

Providing a voice to local communities

The size, scale & support to be viable

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A ULTV Briefing Paper, “A ‘sixth’ public service network for the UK – how Channel 6 would work” has also been submitted to Ofcom under separate cover.

ULTV congratulates Ofcom on the *Digital Local* report and subsequent technical solution to deliver local TV to all UK households...

"Local TV has struggled to develop in the UK for reasons that have been very well documented elsewhere. In contrast, most of Europe and North America now has a well developed structure of local TV operations."

John Glover, Ofcom, *ACTO newsletter*, June 2005

"Many of the potential benefits of local services are social benefits that are unlikely to be taken into account by the market: social cohesion, democratic engagement, better-informed and more active citizens."

***Digital Local*, Ofcom, 2006**

Add/drop offers *"the most consistent and convenient solution for local TV"*

***Digital Local*, Ofcom, 2006**

Business modelling for local TV demonstrates *"the greatest impact is felt when DTT is extracted, suggesting that this platform is core to the delivery of a profitable service."*

***The economics of delivering local digital audio-visual and interactive services*, Spectrum report for Ofcom/DCMS, 2005**

Ofcom's DDR research concludes: *"The vast majority of participants opted for a future where everyone would have access to one service, as this was felt to be the fairest option."*

Digital Dividend Review Market Research 2007 Executive Summary, Ofcom, November 2007

"Add/drop is a feasible proposition for local services and offers extensive coverage..."

Technical options for terrestrial local television services, Ofcom, February 2007

The PSB Review committed Ofcom: *"To assess future options for funding, delivering and regulating public service broadcasting..."*

Terms of Reference, September 2007

The likelihood of market failure in local TV suggests there may be *"a case for intervention by central or local government"*.

Philip Rutnam, Ofcom Partner, 10 April 2008

"We have decided not to intervene (to reserve access to DDR spectrum for citizen focused content) but we believe it is important to consider the issues faced by such services that generate broader social value. We will do so in our second PSB review."

Digital Dividend Review statement, December 2008

The PSB Review confirms the arrangements for the broadcast of local programming on Freeview are wholly unsatisfactory. Thankfully, Ofcom has already identified the most appropriate solution...

Public Service Local TV

Over 150 MPs demand it:

“My EDM provides Ofcom with a practical solution to meet the high demand for local content and to enhance the plurality of broadcasting voices available to all UK citizens.”

Ian Stewart MP, March 2008

The Communications Act planned it:

Local TV services would be carried on a digital television multiplex in order to meet “...*the needs of the area or locality where they are received.....broaden the range of television programmes available for viewing by persons living or working in that area or locality, and....increase the number and range of the programmes about that area or locality that are available for viewing, or to increase the number of programmes made in that area or locality that would be so available.*”

Section 244 of the Communications Act 2003

The European Parliament supports it:

On 25 September 2008, the European Parliament passed a resolution calling on “*Member States to make television and radio frequency spectrum available, both analogue and digital, bearing in mind that the service provided by community media is not to be assessed in terms of opportunity cost or justification of the cost of spectrum allocation but rather in the social value it represents*”.

European Parliament resolution on Community Media in Europe

More and more MPs are saying "we need local TV" ...

"There are a lot of innovative ways of funding a local TV offering in the region, and this is the time to put these voices forward. It will clearly be the case for some years to come that the TV offering will have a carryover impact on to the internet..."

Andy Burnham MP, Secretary of State for Culture, Media & Sport

Fifth Convergence Think Tank Seminar, 9 October 2008

"Ask any visitor to the US what the biggest difference between UK and US television is, and they are likely to say it is the lack of local TV...Does this matter? I believe it does. Indeed I believe that the lack of local TV in Britain is the biggest single failing of the British broadcasting industry."

Jeremy Hunt MP, Shadow Culture Secretary

Speech to London School of Economics, 29 October 2008

"Has Ofcom considered the possibility of creating a "regional" public service broadcasting license for a provider who can give a demonstrable and measurable commitment to properly provide a guaranteed minimum of coverage, hours, prime-time and quality of broadcast?"

Andrew George MP, Liberal Democrats

Response to PSB Review phase 1, 19 June 2008

"I do not want locally auctioned channels to be block-bought and turned into gaming or shopping channels; there must be a system to ensure that local television continues."

Edward Vaizey MP, Shadow Culture Minister

Adjournment Debate, 24 April 2007

"You will know that I am very supportive of local television and concerned about its future."

Ann Widdecombe MP, Conservatives

Letter, 23 October 2008

....and many more....

The challenges facing free-to-air 'local' programming:

- **Local TV RSL regime abolished at DSO**
- **The Community Channel losing access to Freeview**
- **ITV1 social action programming a distant memory...**

...and now, here's the solution supported by over 150 MPs...

Response to questions

United for Local Television (ULTV) requests that Ofcom reads the following answers in conjunction with its response to the phase 1 consultation.¹ To minimise repetition, ULTV does not seek to present the case for intervention to support PSB, including intervention to support local programming on linear TV as endorsed by Ofcom's research. Rather, ULTV is grateful to Ofcom for the opportunity to comment on the most appropriate forms of policy intervention at the current time.

ULTV has produced a briefing paper, A 'sixth' public service network for the UK – How 'Channel 6' would work, which has also been submitted to Ofcom as a separate document. This briefing paper explores how a new licensing regime for 'Channel 6' might work in practice.

Section 4: Models

1) Do you agree that public service provision and funding beyond the BBC is an important part of any future system?

The BBC must not become the sole provider of PSB

1. ULTV strongly agrees with Ofcom that it would be inappropriate to rely on any one institution – even the BBC – to meet all public service broadcasting provision. Ofcom's priority should be to encourage the market to deliver a wide range of audiovisual content but, where there is a strong risk of market failure, all policy options must be fully considered.
2. Plurality has a price. Any intervention to support PSB must be assessed with a view to ensuring the benefits outweigh the costs and both the BBC and the market are not unduly damaged in the process. In many genres, the BBC is able to compete effectively in the market and meet the demand for PSB through its own commissioning procedures. The strongest case for plurality will always be in news and current affairs where it would be dangerous to allow any one provider to dominate. It is not a coincidence that this is also the genre where independence from politicians is most vital and this must be reflected in any institutional and funding arrangements established.
3. There are some services which the BBC may not be best placed to offer, such as local TV services, where the BBC Trust has suggested market provision may be more appropriate. However, given the strong risk of market failure identified by Ofcom in both the PSB Review and its Market Impact Assessment on BBC local video, the policy options demand full and thorough analysis.²

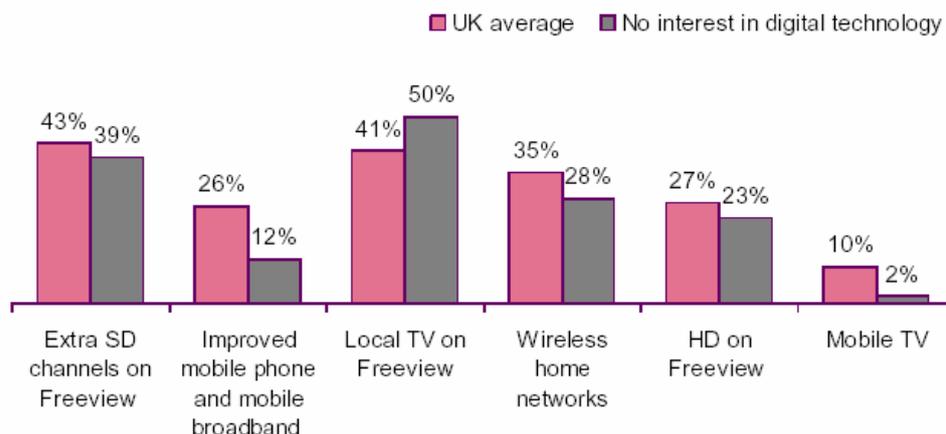
Promoting Digital Britain

4. ULTV envisages local TV having a special role to play in promoting 'Digital Britain'. Ofcom's research demonstrates high demand for local TV across all ages and demographics. Importantly, local TV is the one digital service demanded by even the most 'reluctant adopters' of digital technology.³

¹ http://www.ofcom.org.uk/consult/condocs/psb2_1/responses/ultv.pdf

² Paragraph 8.33 states: "As discussed above, how the provision of local TV will develop is highly uncertain. However, it is possible that future opportunities for market entry and innovation will arise. This could be as a result of public funding as an outcome of the PSB Review, or from local authorities." Ofcom (November 2008), *Market Impact Assessment of the BBC's Local Video Service*, London: Ofcom

³ Ofcom (November 2007), *Digital Dividend Review Market Research 2007 Executive Summary*, London: Ofcom



Source: Ipsos MORI survey 2007 UK Base: 1,049, no interest in technology: 217

- Ofcom's research indicates that local TV engenders enthusiasm even among the most diehard digital 'sceptics'. This particular group of local TV viewers would potentially benefit the most from programming which explains digital technology and how it can be used to access further information resources, for instance how to use the internet facilities at local libraries.

The government is aware of the benefits of local TV

- Local TV has long been part of the government's plans to promote and facilitate digital inclusion. The former Broadcasting Minister, Lord McIntosh, told the Scottish Local TV Forum in March 2005:

*"We envisage that local television will play a valuable role in keeping communities informed and in particular, help keep in touch those more socially isolated members of the community who may not have access, or are uneasy about using new technology."*⁴

- ULTV argues that consideration must be given in the PSB Review to the interests of all citizens but especially the most vulnerable in society who most rely upon linear TV. This should include a review of the best use of Freeview multiplex capacity to provide the services most demanded by older citizens and lower income groups who are, to a large extent, not targeted by existing broadcasters.

Those who cannot read or write gain their information from television

- It is a stated priority of the UK Government to enhance basic literacy and numeracy skills for adults.⁵ The Leitch Review of Skills in 2006 recommended a great increase in the pace of skills acquisition in order to keep the UK competitive. Objectives for 2020 included a new target that 95 per cent of all UK adults achieve the basic skills of functional literacy and numeracy, an increase from levels of 85 per cent literacy and 79 per cent numeracy in 2005.⁶
- Those who struggle with reading and writing gain nearly all of their information from television. The functionally illiterate are one of the least likely groups to use the internet as a resource for local information. The unemployed and those on low incomes are also disproportionately less likely to have a home internet connection.
- The greatest demand for local TV comes from low income sub-groups, the over-65's and those with minimal interest in digital technology. In the latter category, a remarkable 50 per

⁴ Message from Andrew McIntosh to the Scottish Local TV Forum, 23 March 2005

⁵ The Skills for Life strategy for improving adult literacy and numeracy skills for England was launched in 2001 by the Department for Education and Skills (DfES) now the Department for Children, Schools and Families

⁶ To download the full report visit www.hm-treasury.gov.uk

cent of the entire group rate local TV on Freeview as their preferred application.⁷ That is why one of the most appropriate mediums to promote education, training, employment opportunities and other public services in any given area is a free-to-air terrestrial local TV station.

2) Which of the three refined models do you think is most appropriate?

An enhanced role for new PSB entrants

11. In principle, ULTV prefers evolution to revolution. Citizens and consumers benefit from the development of new digital services which complement, rather than replace, existing linear TV provision.
12. ULTV therefore believes that the model outlined by Ofcom for **enhanced evolution** appears the most appropriate at the current time. However, ULTV also believes that the benefits of PSB status should be opened up to new PSB entrants, not just the incumbent (analogue) PSB operators.⁸

Enhancing PSB provision beyond the analogue incumbents

13. If Channels 3, 4 and 5 experience reduced audience levels in the future this will not be because they have less regulatory resources at their disposal than today. Rather, it will be because viewers are choosing to watch them less. ULTV believes the most appropriate means of addressing such market developments is not, in general, to extend the privileges and resources granted to the incumbent PSB operators but, rather, to extend the privileges and resources already enjoyed by these broadcasters to other new PSB entrants.
14. ULTV believes it is no longer realistic to expect just a handful of PSB operators to meet the full range of PSB plurality demanded by citizens. ULTV therefore proposes that new 'dedicated digital channels' are licensed by Ofcom to supply specific PSB genres at risk of being under-served. These services could be granted many of the benefits associated with PSB status such as access to gifted Freeview capacity and EPG priority.
15. Dedicated genre channels are likely to continue to benefit from Freeview capacity and EPG priority status even if, eventually, the value of these regulatory assets tends to decline. This is because such dedicated genre services will, unlike 'mixed genre' PSB services, have minimal opportunity costs associated with their PSB obligations.

The six Freeview multiplexes are granted spectrum intended for PSB purposes

16. This submission does not detail the spectrum options for the delivery of PSB services since these are well known to both Ofcom and government. However, the principal regulatory assets which Ofcom uses to support PSB purposes are the six Freeview multiplexes in the so-called 'retained' spectrum. In addition, Ofcom has decided to appoint a Band Manager to protect some of the 'interleaved' spectrum (spare spectrum not needed by the main Freeview multiplexes) specifically for programme making and special events (PMSE).⁹ The remaining spectrum currently used by analogue television (the so-called 'cleared' spectrum) Ofcom has decided to auction on an application and technology neutral basis.¹⁰

⁷ Ofcom (November 2007), *Digital Dividend Review Market Research 2007 Executive Summary*, London: Ofcom

⁸ together the BBC, Channel 3 (ITV1), Channel 4, Channel 5 (Five), S4C and Teletext – in this submission referred to as the "incumbent PSB" operators

⁹ Ofcom has said a Band Manager may also release spectrum to other compatible applications such as DTT at its discretion. However, ULTV has pointed out that a profit-maximising Band Manager would have little or no incentive to release spectrum to a DTT user upon request. The rational action for a profit-maximising Band Manager would generally be to hold spectrum back in negotiations in order to extract monopoly rents. ULTV has therefore called for positive action to ensure local TV has access to interleaved spectrum alongside PMSE.

¹⁰ Ofcom (December 2007), *Digital Dividend Review – A statement on our approach to awarding the digital dividend*, London: Ofcom. It is reported that Ofcom is now examining options to make more efficient use of the retained spectrum, potentially allowing a greater proportion of it to become available to new applications beyond the six Freeview multiplexes.

17. Ofcom and government currently licence six Freeview multiplexes. Each of these multiplexes will be capable of carrying around 9 SD video streams when operating on full power post-DSO. Three of the six multiplexes have are often referred to as 'PSB' multiplexes because they are controlled by the incumbent PSB operators and have more extensive coverage obligations. The other three have become colloquially known as 'commercial' multiplexes. These descriptions are somewhat misleading because five of the six multiplexes have equal status in legislation (the exception being Multiplex 1 which is granted to the BBC, rather than Ofcom, to manage).¹¹

The value of spectrum is appreciating

18. It is a common misconception that the value of spectrum is diminishing. In fact, video streams on Freeview are now reportedly being auctioned for in excess of £10m per annum, more than double the original price of this capacity when the Freeview brand replaced ITV Digital.
19. In the past, Ofcom and government only had five analogue terrestrial video streams in order to meet all PSB purposes, of which only four offered universal UK-wide coverage.¹² The DSO process affords the opportunity to reserve additional Freeview video streams for genres of PSB programming at risk of being underserved by the current market.
20. ULTV believes that PSB under-supply is not today, principally caused by lack of consumer demand or even by structural changes in the advertising market. Rather, the near-impossibility of obtaining capacity on the Freeview platform crowds-out new free-to-air TV services meeting PSB purposes.

A mixed funding model

21. ULTV hopes the existing mixed funding model will evolve and that both existing and new PSB entrants will be able to benefit from ongoing interventions such as:
- (i) granting of regulatory assets including gifted capacity on Freeview;
 - (ii) targeted and proportionate direct support and partnerships (e.g. assistance to the incumbent PSB operators with the cost of meeting universal service obligations where justified); and
 - (iii) significant direct funding (e.g. the BBC and S4C).

A competitive direct fund?

22. As Ofcom recognises, there is a possibility over time that regulatory assets on their own will not be adequate to meet the fall demand for PSB. If there is ultimately a requirement for additional public funding within the enhanced evolution model then ULTV believes that, typically, this should be through competitive funding. The only justification for assigning direct funds without an open competition would be in the most exceptional circumstances and where the recipient is the least likely to use the funding to negatively impact on competitors in the wider market.
23. ULTV notes that 'competitive funding' gained relatively modest support in Ofcom's phase 1 consultation. This was partly due to concerns about where the funding would come from. A number of practical considerations were also raised. How would funding levels be set? How would funds be distributed? What monitoring would take place to ensure funds are being used to best effect? How could reach and impact be maximised? Would providers consciously or sub-consciously seek to serve their political masters? What would be the wider state aid implications? How could fair competition be maintained?

¹¹ ULTV uses "Freeview" to refer to digital terrestrial television (DTT) throughout this submission. Unless otherwise stated, definitions are in line with those used in the consultation document. ULTV acknowledges that Ofcom and government have decided to 'upgrade' Multiplex B to the new DVB-T2 transmission standard but this ultimately remains licensed to a BBC subsidiary under the terms of the Broadcasting Act 1996 and therefore has the same legal status as all other Freeview multiplexes.

¹² In a small number of areas, frequencies were also identified for low-powered Restricted Service Licences (RSLs) offered to local TV service providers, although these were often not 'in group' and so could not be received by the majority of TV aerials used by viewers. Indeed, it is widely agreed this was one of the great flaws in the RSL regime.

24. Ofcom and government are aware that any plans for a direct 'PSB fund' would require further consideration. Whilst not opposed to direct funding in principle, ULTV would point out that the award of regulatory assets is an established and proven method of meeting PSB purposes. The use of indirect funding therefore cannot be dismissed as a method of achieving the objectives of competitive funding. Even the current system does not award 'direct funding' to the BBC and S4C alone. Rather, it mixes direct funding with regulatory assets in order to maximise the efficient use of public resources.

Supporting citizens broadcasting

25. It may be that some limited and modest forms of direct funding do not require primary legislation. For instance, some member of ULTV and Public Voice have suggested that a Citizens' Broadcasting Fund (intended to help fund programming produced by citizens) might be worthy of further consideration. Such a fund was envisaged by the Communications Act 2003 and therefore would not require primary legislation.
26. A fund which supported media training for local community and voluntary organisations could potentially produce thousands of new programme-makers. Working in partnership with broadcasters this could potentially enhance the plurality of broadcasting voices at extremely modest cost to the Exchequer.

Opportunities for public funding that already exist

27. In addition to regulatory assets, there are a wide variety of options to exploit existing funding sources that do not rely on additional funds to be identified central government.
28. Whilst it is not realistic to expect the UK's entire PSB funding 'gap' to be met from local authority budgets, Kent County Council (KCC) has recognised the merits of re-allocating part of its existing communications budgets to local video.¹³ The KENT TV model was presented to policy makers and debated at the Public Service Broadcasting and Local Television conference which KCC sponsored in Westminster on 8 July 2008.
29. Regional Screen Agencies in England already invest £20m per annum in regional production. Propller TV was launched on Sky with £5.2m of investment from Yorkshire Forward, the Learning and Skills Council and the Higher Education Funding Council working with the UK Film Council and Skillset.
30. If a UK-wide local TV network were to be developed with near-universal coverage, it is inconceivable local partnerships would not emerge between the public, private and voluntary sectors to support local programming initiatives.

PSB can help make more efficient use of public expenditure

31. PSB is not intended to reduce or enable more efficient government expenditure but, at a local level, this is a realistic and plausible ambition. Local TV stations are likely to prove one of the most effective mechanisms to promote local public services and media literacy. Ofcom has long seen local public bodies as playing a major role in supporting local TV services. ULTV agrees that, on appropriate terms and as part of a coordinated network, the benefits of relationships between local public service providers and local TV operations could be maximised.

It is not possible to put a monetary value on the benefits of PSB

32. It is not possible to place a monetary value on the benefits of PSB to society.
33. By way of example, a local TV service would aim to foster mutual understanding, tolerance and respect amongst those of different cultures, backgrounds and faiths. This is vital at a time in

¹³ In September 2007, Kent County Council launched KENT TV as a broadband service, to help assess the demand for local TV. The Council agreed to invest £1.4m over two years, and, after a tender process, invited Ten Alps Digital to launch and produce the service.

which racial and ethnic tensions are surfacing in many communities. Local TV would be uniquely well placed to inspire debate on controversial issues in a balanced and responsible manner and encourage difference to be appreciated rather than feared.

The role of the BBC in delivering PSB in the future

34. ULTV shares Ofcom's enthusiasm for the BBC's ongoing role at the heart of PSB provision. Like Ofcom, ULTV opposes 'top-slicing' even whilst recognising the 'switchover surplus' is already available to others. In the longer term, ULTV notes the potential efficiency savings of merging licence fee collection with the Council Tax although this does not change the fundamental question of how these funds should be applied.
35. Undoubtedly of interest, in the immediate future, will be the BBC's proposals to make resources available to third parties to support PSB provision. Whilst this requires a change of mindset by BBC management, it potentially offers a new form of indirect funding to complement existing regulatory assets. ULTV does not discount the potential high value of this support especially if Freeview was to ever diminish in value. At that time, it is highly likely the BBC would be in a position to offer a 'trusted guide' for PSB content from a range of providers and, possibly, access to its technology.
36. The Community Media Association has established a partnership with the BBC Trust, as has the Community Channel. ULTV welcomes the BBC Trust's request that the BBC management consider new opportunities to work in partnership with local media organisations. It is important that such partnerships are material but also that they are open, transparent and subject to scrutiny, possibly by undertaking a similar process to the existing Public Value Test.
37. ULTV would be concerned to ensure partnerships between the BBC and other broadcasters are not anti-competitive. ULTV supports Ofcom's desire to ensure that interventions are proportionate and fairly distributed and do not merely support a 'cartel' of existing institutions.

It would be imprudent to purely rely on Channel 4

38. There is a grave danger in relying on Channel 4 to be sole supplier of PSB plurality with the BBC. To make a parallel with the financial sector, a smart investor spreads their risk. In the future, Channel 4 may suffer from poor management or failed investments. It may lose audiences and revenues regardless of any support provided to it. Channel 4's "Next on 4" strategy document demonstrates the nature of the risks to Ofcom and government. One day Channel 4 felt able to confidently announce it would invest £10m in funding programmes for older children – shortly afterwards it said it was unable to fulfil such a commitment due to financial pressures elsewhere in its business.¹⁴
39. The licensing of dedicated genre PSB services would ensure such risks are minimised. When travelling in stormy waters, Ofcom should seek to spread its cargo across a variety of ships.

The elephant in the room

40. There are a number of options that could enhance free-to-air TV revenues and create a more level playing field between broadcast and broadband. Ofcom is considering the current prohibition on product placement as part of its wider review of advertising rules, albeit there is a widespread feeling the separation of editorial and advertising has worked well for UK viewers.
41. There is no question Contract Rights Renewal (CRR) has had a detrimental impact on all ITV network companies, as well as smaller digital channels which benchmark their prices against ITV1. Whilst CRR is the subject of review by the OFT and outside the remit of the PSB Review, some might see it as the 'elephant in the room'. If CRR were reformed or removed, this could have implications on the economics of FTA provision beyond ITV1 in the short-term.

¹⁴ http://www.broadcastnow.co.uk/news/2008/09/c4_cuts_bite_into_next_on_4_plans.html

3) Do you agree that in any future model Channel 4 should have an extended remit to innovate and provide distinctive UK content across platforms? If so, should it receive additional funding directly, or should it have to compete for funding?

ULTV supports Channel 4

42. UDTV strongly supports Channel 4's role as a publisher producer committed to PSB values. Whilst it is appropriate to review Channel 4's role, UDTV does question whether its remit really should be materially "*extended and enhanced*" as Ofcom suggests. It is clear that Channel 4 faces financial difficulties even within its existing remit. Channel 4's greatest strength is that it is an innovative broadcaster with a well defined brand. It is not realistic, or even desirable, to demand Channel 4 become all things to all people with the wide service remit of a licence-fee funded organisation such as the BBC.
43. Viewers no longer watch services from the incumbent PSBs quite as much as they used to. This is the inevitable consequence of losing their monopoly hold over all TV viewing. UDTV would caution against granting direct state subsidies to the incumbent PSBs, including Channel 4, to compensate for loss of income resulting from increased choice for viewers. There are enormous risks associated with using state aid to support established businesses struggling to adjust to a more competitive market environment.
44. Two of the genres identified by Ofcom in greatest danger are children's programming and nations/regions programming. Neither of these are programming areas currently provided by Channel 4, or for which there is reason to believe it is capable of providing better than any other supplier. UDTV would therefore not support new funding for Channel 4 to the exclusion of new entrants.

Channel 4 does not appear to be grossly under-funded

45. It is conceivable that the benefits of additional funding to Channel 4 would outweigh the costs, dependent on the level and type of funding identified. However, Channel 4 remains an enormously successful commercial broadcaster.
46. The recession may well impact on all commercial broadcasters (although some expect advertisers to turn back to mass audience channels rather than take risks elsewhere).¹⁵ It is clear Channel 4 is being forced to readjust its priorities sooner than it may have anticipated. However, Ofcom has not produced overwhelming evidence that Channel 4 is underfunded. Its revenues remain roughly £500m greater than its expenditure on UK original production. It has announced it will cut staff numbers from around 1,000 to 850 but this still remains higher than ten years ago when it flourished (in a less competitive environment) with only 600 employees.

ULTV welcomes Channel 4's 'self help' strategy

47. Channel 4 has the privilege of not having to account to shareholders but, in the private sector, it would not have been able to allow costs to increase as much as over the past ten years. To their credit, Channel 4's management recognise they must now be seen to exercise greater cost control.
48. UDTV welcomes Channel 4's commitment in Next on 4 to "*aggressively pursue a strategy of self-help*", painful as this inevitably will be for all involved.¹⁶ UDTV suggests 'self help' could involve a root and branch review, to ensure Channel 4 plays to its core strengths and priorities. It is a legitimate question, for example, whether Channel 4's costs might be lower if it were based in one of the UK's major metropolitan centres, closer to producers in the nations and regions outside of central London.

¹⁵ There is some evidence that local businesses are turning to TV in preference to other media. STV has announced that, for the ten month period ended 31 October 2008 regional airtime sales were up 13 per cent with similar growth forecast to continue in November and December. Source: stv group plc (November 2007), *Interim Management Statement - Quarter 3 9* (announcement to London Stock Exchange via Hugin regulatory news service), Glasgow: stv group

¹⁶ Channel 4 (June 2007), *Next on 4*, London: Channel 4 Television Corporation

A strategy of pursuing non-core investments is high risk

49. ULTV is concerned that Channel 4 does not seek to extend into areas outside of its core competence. There is little evidence of market failure in innovative digital applications. At the same time there is considerable evidence of business failure from new digital investments. Channel 4 is not a venture capitalist, even though its Chairman is accomplished in this field. Channel 4's foray into DAB digital radio (encouraged by Ofcom) provides a salient lesson in the dangers of pursuing high-risk investments.
50. Nobody questions Channel 4 should have a comprehensive internet platform supplying video and other content. However, it is simply not clear that Channel 4 has the structures in place to assess all of the risks from investment in new applications rather than concentrating on its core area of competence – commissioning high quality TV.

It may not be prudent to transfer assets from Channel 3 to Channel 4

51. Both ITV1 and Channel 4 provide UK-wide news. Channel 4's approach is different and, as it happens, profitable. However, its news audiences are generally lower than ITV1's. If Ofcom is concerned to maintain effective plurality and competition in core PSB genres such as UK and nations news then, on balance, it may not be prudent to transfer regulatory assets from the Channel 3 licence holders to Channel 4.

Appropriate funding support

52. In general, ULTV supports open and transparent competition for funding support, whether direct or indirect. However, ULTV recognises that all PSB operators have a financial liability which is not imposed on their competitors – the cost of implementing universal service obligations. It is entirely reasonable (and compliant with European state aid rules) for any switchover surplus within the licence fee to be used in a proportionate and targeted manner to allow all commercial PSBs to pay for the costs of additional distribution, using over 1,000 transmitters not used by commercial services.
53. To date, the enormous growth in internet advertising has not significantly impacted on TV revenues. Nevertheless all free-to-air broadcasters must seek to adjust to ongoing changes in the market. Such changes might include identifying new regulatory assets or partnerships to support PSB, rather than simply seeking direct funding (subject to appropriate oversight).
54. There are, of course, state aid implications to assisting one specific broadcaster in an advertising market. As a matter of general principle, if there ever were to be any new central government fund to enhance PSB provision, then ULTV would expect this fund to be open to all, not just Channel 4.

4) Do you think ITV1, Five and Teletext should continue to have public service obligations after 2014? Where ITV1 has an ongoing role, do you agree that the Channel 3 licensing structure should be simplified, if so what form of licensing would be most appropriate?

Ongoing news obligations and out-of-London production

55. Ofcom describes the long-term 'PSB' status of Channels 3 and 5 as "*finely balanced*". Certainly, the case is more marginal today than at any time in the past. However, if Ofcom were to allow both Channel 3 and Channel 5 to become pure commercial broadcasters, with no public service obligations, this could have a detrimental impact on out-of-London production and, potentially, UK and nations news. In effect, whole genres of PSB in the UK could be reliant upon either state-owned institutions or direct state funding.
56. On balance, it is difficult to see what there is to gain from not allowing the Channel 3 and 5 licences to be renewed through an open tender process. As Ofcom notes, this may justify a

more simplified Channel 3 structure. ULTV agrees that the Teletext licence appears increasingly anachronistic – channel operators may prefer to provide their own branded data services in the future.

57. It is impossible for Channel 3 licensees in the nations to develop their business if there is a consistent ongoing threat that the main supplier to the network will withdraw to establish a rival service. Therefore, if it is decided that Channel 3 should continue to operate on the basis of more than one licence, appropriate measures should be taken to ensure licence holders are not in a position to continuously threaten to withdraw from (and compete against) the network.

The benefits of regulatory assets could be spread more widely

58. Ofcom states that the benefits of PSB status for Five are likely to outweigh the costs up to and beyond switchover.¹⁷ Although its regulatory burden is slight, Five does make a valuable contribution in some underserved genres (such as arts and history) and programmes for pre-school children. This is largely due to commercial logic, rather than external regulation.
59. ULTV questions whether, in the future, it may be more appropriate to use some of the reserved capacity currently granted to the Channel 5 licence holder to dedicated digital channels for factual content (e.g. arts, history) and children's programming. Across its three reserved video streams, Five's schedule is dominated by commercial content and does not offer long-term guarantees that PSB genres will be adequately served.
60. It is important for Ofcom and government to review whether it continues to be appropriate to reserve more than one SD and one HD video stream each for Channels 3 and/or 5. It may be more beneficial to release some of these video streams to other parties to provide dedicated genre services, thereby enhancing the plurality of PSB providers available to all citizens.

5) What role should competition for funding play in future? In which areas of content? What comments do you have on our description of how this might work in practice?

The value of digital spectrum is higher than analogue

61. ULTV supports the principle of 'competition for funding'. ULTV notes that regulatory assets are the most established method of competitive funding in the UK. Importantly, this funding method has created institutions with an incentive to invest in developing a long-term business, a real interest in maximising reach and impact and a strong sense of independence from government.
62. In the first phase of the PSB Review, Ofcom argued convincingly that analogue spectrum is rapidly diminishing in value and will fall to zero at DSO. However, Ofcom is aware that the majority of analogue spectrum is being redeployed to provide Freeview post-DSO, including the four non-BBC multiplexes (muxes 2, A, C & D). It is indisputable that these multiplexes have been gifted regulatory assets significantly more valuable than the current residual value of analogue spectrum.
63. It is therefore difficult for Ofcom to argue that the value of spectrum granted to broadcasting is diminishing. The immediate question is what intervention may be necessary to ensure this ongoing subsidy is used effectively to deliver the PSB programming demanded by citizens, rather than simply generating supernormal profits for multiplex operators.

Using regulatory assets to support PSB

64. ULTV does accept that competitive funding could have a long-term role to play as Ofcom suggests, particularly the use of regulatory assets which may not require primary legislation. ULTV believes the government should now put in place the mechanisms to enable new PSB entrants to join the Freeview platform, making efficient use of existing regulatory assets.

¹⁷ Paragraph 7.18 of *Ofcom's Second Public Service Broadcasting Review Phase 2: preparing for the digital future* (September 2008), hereafter the "consultation document"

65. In phase 1, ULTV put forward a suggestion for the development of new niche-genre dedicated digital channels with quasi-PSB status. Subject to research and consultation, suggested dedicated digital channels might include:

- Local TV
- News
- Sport
- Children / Teens
- Factual / History / Religion
- Science / Nature
- Arts / Culture / Film

66. Under ULTV's proposal, 'free' access to Freeview and cable would be guaranteed. As part of the award criteria, Ofcom could assess commitments to original UK production. For example, if Ofcom wanted to encourage investment in UK programming for older children then, instead of awarding capacity to the highest cash bidder, it could award the licence to the applicant promising the greatest financial contribution to independent production (and enshrine this commitment as a licence obligation).

The value of regulatory assets

67. It is not possible to dismiss the value of regulatory assets when video streams are selling in the market at c.£10m per annum. This is over half the £19m programming budget of ITV3, the UK's second highest rating digital channel. The only non-BBC children's channel on Freeview, CITV, has an annual budget of £3.5m. No other children's channel can afford the rents payable to Freeview's near-monopoly operators. With gifted Freeview capacity, new dedicated local, children's, factual and/or arts services could make a significant contribution to original UK production, enhancing the plurality of PSB content available to all citizens.

Ofcom cannot predict the future with certainty

68. Ofcom has convincingly argued that it cannot predict the long-term with any certainty. Ofcom states:

*"This analysis concentrates necessarily on the relatively near term – the next three to four years. Beyond that, it becomes increasingly difficult to predict how audience behaviours, business models and technology may develop."*¹⁸

69. The market is generally better placed to predict the future than the regulator. Market trends indicate carriage agreements for Freeview capacity are being renegotiated **upwards**. The reality is that Freeview is increasingly become the 'default' platform for viewers, integrated in all new TVs. The evidence of inflationary pressures in digital capacity suggests the market does **not** expect this value to diminish any time soon.

There is no free and open market in Freeview capacity

70. The Competition Commission has acknowledged concerns about the lack of an effective functioning market for DTT multiplex capacity, stating:

"...ITV controls a significant portion of DTT capacity. Access to this platform is regulated, although some concern has been expressed to us as to whether current regulation sufficiently enables competition and non-discriminatory access to capacity.... there appears to be little spare capacity to be made available over the next few years.....In summary, our view is that there are relatively low barriers to entry for a television channel provider aiming to reach a small number of subscribers. However, it would be much more difficult for a new channel to

¹⁸ Paragraph 3.22 of the consultation document

acquire or develop quality content and reach large audiences by providing FTA services.”¹⁹

71. At present, Freeview is a platform that is highly capacity constrained and dominated by a small number of providers. The reality is that it is difficult for Ofcom to say with any certainty what programming will be under-supplied by the market in the absence of a free and open market to begin with.²⁰

ULTV welcomes the Digital Britain report

72. Any future collapse in Freeview carriage costs is likely to be the consequence of developments in distribution technology. Reduced barriers to entry could potentially create opportunities for new entrants to deliver public service content that do not appear viable today. It is simply impossible to predict what intervention (if any) might become appropriate at that time. It is therefore too early to seek a ‘once and for all’ conclusion to the PSB policy debate.
73. Whilst there are clear bottlenecks in the supply of Freeview capacity, UDTV is broadly optimistic about the long term. The incumbent PSB operators have developed brand equity that should stand them in good stead for the future. The *Digital Britain* report which Lord Carter has promised in 2009 is understood to be examining public policy options on universal provision of next generation access networks which, if available to all citizens, would create new opportunities for the universal distribution of PSB content.²¹
74. UDTV also refers Ofcom to the answers to section 6 (questions 9 to 11).

Section 5: Long-term: nations and regions

6) Do you agree with our findings that nations and regions news continues to have an important role and that additional funding should be provided to sustain it?

There may be more appropriate alternatives to regional programming

75. UDTV believes positive action is required to support the provision of news in the devolved nations and localities across the UK. Whether regional news on ITV1 is worthy of long-term intervention is more dubious, given that regional programming is well catered for by the BBC and there is considerable evidence of a market ‘gap’ for more local provision (identified by the BBC itself).
76. ITV1 no longer provides a great deal of ‘local’ news. With notable exceptions in Scotland, ITV1’s general focus has already moved to stories of interest across a wide geographic area and is likely to continue to do so.
77. Ofcom’s research generally indicates a greater demand for local programming, closer to where viewers live, than the largely ‘artificial’ ITV1 regions:

“Local news was of greater personal importance to the majority of respondents than regional news... There was little or no awareness of other ITV regional programming output.”²²

The difference between local and regional

78. Generally ‘local’ and ‘regional’ tend to be lumped together but, very often, they demand different approaches to newsgathering.

¹⁹ Competition Commission (2007), *Acquisition by British Sky Broadcasting plc of 17.9 per cent of the shares in ITV plc – Report sent to Secretary of State (BERR)*, London: Competition Commission

²⁰ In its 2007/8 Annual Plan Ofcom committed to complete its review of “wholesale digital TV platforms” and “the rules which promote fair and effective competition in relation to terrestrial multiplexes”. Ofcom subsequently cancelled this work.

²¹ http://www.culture.gov.uk/reference_library/media_releases/5548.aspx

²² Essential Research (July 2008), *Assessing the likely impact of ITV’s regional news proposals Final Report*, London: Essential Research Ltd

79. The nature of local news is that it is of interest because of its closeness to its audience. Local news often benefits from the adoption of video journalists with lightweight cameras, shooting and editing short packages from within the community – local people, local politicians and local places. Good local reporters have a thorough knowledge of the area and develop a variety of sources and contacts.
80. In contrast, regions and nations news will often take a different approach – providing comment and analysis of relevance to the whole region or nation. This tends to lead to focus either on ‘hard’ news or on stories which do not fit a ‘local’ description. Nations and regions news can be more expensive to produce than local news, where appropriate using correspondents with specialist knowledge.
81. ULTV sees local programming as complementary (and not supplementary) to nations and regions provision. ULTV would call for a more local form of news provision even if regional news was not facing such an uncertain future on ITV1. However, given limited funding resources, ULTV believes there is a case for focusing intervention on the protection of national and local, rather than national and regional. The undoubted success of STV’s more sub-regional approach to Scottish news suggests the audience values a more radical alternative to the BBC’s nations and regions provision.

The principal regulatory benefit to STV and UTV is access to the ITV network

82. For the foreseeable future, the cost of news in the devolved nations appears **sustainable**, at least on ITV1, so long as the current networking arrangements remain in force. Arguably, the principal ‘regulatory benefit’ granted to STV and UTV is not spectrum but access to the ITV network schedule. ITV plc no doubt recognise and regret this, notwithstanding the binding commitments to the minorities given at the time of the merger of Carlton and Granada.
83. Ofcom has produced no credible evidence to suggest the STV and UTV licences will not be viable in the medium to long-term. In return for spending around £7-10m on news and current affairs, STV has £100m of turnover. Like UTV, its business remains profitable and will do so for the foreseeable future. Ofcom may project that STV and UTV’s spectrum & EPG access will soon only be worth £10m but this is only half the story. Both STV and UTV have said the Channel 3 licence benefits, including the network schedule, are core to their businesses.

A salutary lesson

84. There is no question of STV and UTV surrendering their licences. As Ofcom notes for STV or UTV to surrender the licences *“makes little sense, because their business models revolve around delivering their own services within an ITV network schedule. This sustaining service would be likely to be lost if they gave up their PSB status.”*²³
85. This provides a salutary lesson which should help inform future policy decisions, in particular when examining the potential for local TV. If ITV had remained a federation of autonomous licensees, the value of PSB status today would most likely outweigh the costs in the majority of the UK, not just Scotland and Northern Ireland.

The future of news in the nations is tied into the future of ITV

86. Regrettably, the consolidation of ITV in England and Wales has created a company with the power to ultimately walk away from regional programming on the basis that, if Ofcom does not concede to its demands, it can bring down the whole ITV network. This situation is intolerable and requires resolution to provide long-term stability and sanity back to the licensing of Channel 3 across the UK as a whole.
87. Access to direct funding to sustain plurality of news provision in the devolved nations can never be ruled out. However, Ofcom’s immediate priority should be to play an active role in negotiations to ensure the ITV network survives at least until the end of the current licence

²³ Paragraph A1.9 of the consultation document

periods in 2014 – and both UK and nations news is protected as a core obligation throughout this period.

The real cost of nations and regions programming

88. It is difficult to be certain what the ‘true’ cost of nations and regions programming is for ITV1 since Ofcom has not published the figures and industry estimates vary dependent upon whether or not central office ‘cross-charges’ are included. However, in 2007, ITV plc’s contract for UK news provision from ITN cost it £37m. In contrast, the current cost of all nations and regions ‘non-network’ programming in the UK can be estimated at roughly £70m million per annum*, consisting of:

• ITV plc	England, Wales and Border	c.£50m
• STV	Central & Northern Scotland	c.£7-10m
• UTV	Northern Ireland	c.£10.5m

*these estimates assume the changes to Tier 2 quotas proposed by Ofcom in the consultation document (including the £40m of cuts which ITV plc has said it will carry out at the start of 2009 regardless of the outcome of this consultation).

The value of ITV1 licences

89. Ofcom has projected that the value of the regulatory assets granted to all Channel 3 licensees in 2012 will be in the region of £55m. It is, of course, important to recognise that there are real commercial benefits to ITV1 in carrying news for the UK and its nations and regions. Whatever programming ITV1 produces at 6pm would normally have some cost associated with it, and few programmes will deliver such a strong audience and brand equity. However, there is a widespread assumption that ITV plc will wind down its regional news provision between now and 2012. Ofcom appears to have resigned itself to this fate.²⁴

90. ULTV suggests that, post-2012, the primary PSB obligations on ITV1 should be focused on providing a strong UK-wide news service plus:

- ITV plc – a national news service for Wales
- STV – a national news service for central and northern Scotland
- UTV – a national news service for Northern Ireland

ITV plc places minimal commercial value on regional news

91. ULTV would hope ITV plc would also fully consider its position on regional news in England. ULTV notes the speech the ITV Chairman, Michael Grade, made to the Ofcom Nations and Regions Conference on 29 June 2007:

“Under the current advertising rules, most national and regional programmes on ITV carry no advertising minutage... Most nights there is no centre break and no end break...So in the currency of television advertising – commercial impacts – our national and regional news programmes make a minimal contribution. But what if ITV got an advertising credit for its national and regional programmes - say another two or three minutes for every hour of national and regional programmes we ran? Immediately ITV would have an added incentive to invest in programming for the nations and regions.”²⁵

92. ULTV understands that ITV plc has subsequently changed its position on advertising credits, which could impact on overall advertising yields by increasing supply. Michael Grade’s comments demonstrate that the costs and benefits of non-network programming are not a

²⁴ ULTV acknowledges that Channel Television also plays an important role in news provision in the Channel Islands, although any future policy intervention would be a matter for the governments of those islands, rather than the UK government. ULTV advocates capacity on Freeview being reserved for a local ‘Channel 6’ when DSO takes place in the Channel Islands in 2013.

²⁵ http://www.itvplc.com/media/speeches/michael_grade_ofcom_nations/

straightforward calculation, particularly as ITV plc seeks to move into online classified advertising. However, ITV plc has made its position clear – it cannot be relied upon to provide either news or non-news programming at either a regional or sub-regional level in the medium term.

Local TV provision should not be linked to ITV1 provision

93. Regardless of the future of nations and regions programming on ITV1, there is a clear gap in the provision of local news, not just in England and Wales but across the whole of the UK. ULTV does not believe Ofcom or government should wait any longer before putting in place the policy to develop a new tier of local TV provision on Freeview. It is, of course, worrying that ITV plc has said it will not guarantee existing regional news beyond 2012. However, the demand for local TV exists here and now – its development should not be linked to the actions of ITV1.
94. ULTV argues that regulatory assets are the primary form of policy support required to enable local TV to develop although this could be supplemented by other funding obtained by local operators (such as partnerships with local authorities). Ofcom/DCMS analysis suggests a local news channel would break-even if access to Freeview could be obtained (and that was not assuming gifted spectrum as advocated by ULTV or the many advantages of being part of a UK-wide network).²⁶
95. ULTV recognises that the Ofcom/DCMS analysis of business models for local TV has been the subject of criticism by a third party, Phillipa Marks. ULTV refers Ofcom to its rebuttal of Phillipa Marks criticisms in paragraphs 309 onwards of its response to phase 1 of the PSB Review consultation.²⁷

A new tier of independent television

96. ULTV supports an institutional approach to the provision of local news and current affairs. The creation of a new branded TV supplier in a locality aligns the interests of the provider with the interests of the public. ULTV proposes that a new tier of independent TV is developed broadly modelled on local TV stations in the US and Canada where **local news is the primary source of station revenue**. It is therefore in the direct interests of broadcasters to maximise the quality and quantity of their local newscasts – the direct opposite of ITV1 which tends to place no advertising around its local news.²⁸
97. Unlike ITV1, new local TV channels would have an incentive to provide compelling non-news programming covering, by way of example, local issues, history, the environment, religion, arts, social issues and sport. Local TV channels would be well placed to forge partnerships with local organisations to sponsor and/or contribute towards programme production costs. In many cases, existing community producers already exist able to support and enhance the programming of local TV stations.
98. What is certain is that the demand for local TV cannot be met by adopting a laissez-faire attitude, or simply by subsidising ITV1 (directly or indirectly) to provide more of the same. The most viable form of local TV is proven worldwide to have protected access to major TV platforms, to repeat news several times, and to be part of a wider network where synergies can be maximised.
99. Please also see the response to question 8 below.

²⁶ All references to Ofcom/DCMS analysis relate to Spectrum Strategy Consultants (November 2005), *Final Report Ofcom and DCMS – The economics of delivering local digital audio-visual and interactive services*, London: Spectrum Strategy Consultants (now Spectrum Value Partners)

²⁷ http://www.ofcom.org.uk/consult/condocs/psb2_1/responses/ultv.pdf

²⁸ The US affiliate system encourages local TV stations to show local programming as this is where they maximise profits – the networks retain a large proportion of the revenue associated with network content. This is the complete opposite of ITV1 which, since consolidation, has profited from the network schedule and is incentivised to reduce local programming. Unlike ITV1, it can be seen to be in the interest of Channel 6 licensees to maximise local content: (i) because licensees will receive reduced revenues from the network for hours of content they did not themselves commission and (ii) because that is the service's brand USP – those who switch on to the channel tend to do so for local programming.

7) Which of the three refined models do you think is most appropriate in the devolved nations?

ULTV supports enhanced evolution in the devolved nations

100. ULTV supports enhanced evolution in Wales, Scotland and Northern Ireland (the “devolved nations”). It would not be appropriate to rely on Channel 4, an historically English-dominated network, to replace existing ITV1 provision in the long-term. However, ULTV recognises there are pressures on production in the devolved nations and that evolution alone may not be sufficient to meet PSB demand in many programme genres which express indigenous culture.

News in the devolved nations

101. The regulatory assets provided to all Channel 3 licensees are projected by Ofcom to be worth £55m at DSO. This is clearly more than sufficient to pay for news in the nations, especially as it (i) excludes any of the commercial benefits of providing news in Wales, Scotland and Northern Ireland and (ii) the additional obvious benefits to UTV and STV of access to the ITV network.
102. In the longer term, there is a question as to whether the regulatory benefits of £55m can be fairly apportioned between separate national licensees, whether they may diminish in value over time and, to be blunt, whether provision of programming for the devolved nations can be safely reliant on the actions of ITV plc and its future owners and management.

Different options for different nations

103. Each of the devolved nations faces different circumstances. The case for intervention is already accepted for indigenous languages. News and current affairs in Northern Ireland is covered by RTE, which could provide plurality of voice with the BBC if available on Freeview (together with TG3). In Wales, S4C provides Welsh-language programming and could, potentially, have its role extended to provide some English-language news and current affairs if considered desirable.
104. ULTV anticipates that new local TV services will wish to work together to enhance the provision of dedicated programming targeting the devolved nations. However, a case can also be made for a dedicated channel in the devolved nations, not least in Scotland, on grounds other than just news provision.

Scottish Broadcasting Commission – a new Scottish Channel?

105. The Scottish Broadcasting Commission (SBC) has suggested launching a dedicated channel for Scotland, paid-for by a grant from the UK Government.²⁹ ULTV sees potential merits in this proposition. As proposed, the main purpose of the channel would be to reflect Scotland as a nation. News would **not** be the main focus of the service but, rather one of the genres supplied. Much of the content could potentially have re-sale value.³⁰
106. The SBC has prudently suggested that care be taken to ensure that existing and potential future sources of Scottish news (TV, radio, press and online) are not damaged. In addition to direct funding, there may be a case for requiring the BBC to contribute some programming or resources to the service in a similar manner to its support for S4C. The concept of a Scottish ‘channel’ or ‘network’ appears to have been welcomed by Scottish politicians and producers and, perhaps surprisingly, STV who would be well placed to compete for commissions.

²⁹ Scottish Broadcasting Commission (September 2008), *Platform for success – final report of the Scottish Broadcasting Commission*, Edinburgh: The Scottish Government

³⁰ One argument is that the BBC raises £300m from Scottish licence fee payers but only spends £140m in productions in Scotland, a perceived ‘imbalance’ which a new Scottish Channel could help to redress.

How much would a Scottish Channel cost?

107. The SBC suggests a total budget for a Scottish channel of £75m. Whilst this appears modest relative to the budgets of the incumbent PSB operators, this is an unfair comparison. Compared to many digital channels, £75m appears a generous budget. Whilst original programming would inevitably be limited, the funding would be adequate to support new productions and talent.
108. There is no question the cost of a Scottish channel would be high and so are the risks, given it would be aiming for reach in a competitive environment. However, a Scottish Channel would have a unique advantage as a dedicated Scottish service. ULTV believes that the representation of the smaller nations on TV is a benefit worth paying for, not only via dedicated services for the nations (in the English language or otherwise), but also across the whole of the UK on a UK-wide network.
109. The nature of any Union is that funds flow in all directions. The Scottish channel proposal remains in its formative stages but appears worthy of review. ULTV suggests that, if proceeding, the channel is granted 'public service' status and encouraged to cooperate with other new public service entrants, including the Channel 6 network advocated by ULTV. It would be of benefit to the whole of the UK for the best of Scottish channel programming to be available on other networks, such as Channel 6.

When could a Scottish Channel launch?

110. SBC Chairman, Blair Jenkins, has said that, given the requirement for debate, legislation and preparation, it would take at least three years for a new Scottish Channel to launch. ULTV welcomes the debate on the Scottish Channel proposal but believes that a UK local TV network need not take this long to launch. It is therefore possible for options for partnership to be discussed as plans develop.

Would a Scottish Channel appeal to advertisers?

111. ULTV welcomes Oliver & Ohlbaum's analysis on the economic prospects and options for a Scottish Channel.
112. ULTV broadly agrees with Oliver & Ohlbaum's conclusion that there is little evidence that advertisers wish to target the whole of Scotland. It is perhaps not an exaggeration to say a Scottish Channel would be unattractive to all advertisers. London agency buyers would seek a reach wider than just Scotland whilst local independent businesses typically only wish to advertise to a 30 mile radius.
113. Separate from Oliver & Ohlbaum's analysis, the SBC, has recommended that a Scottish Channel operate as a not-for-profit entity without accepting advertising, partly to minimise its wider market impact.

The Oliver & Ohlbaum analysis did not explore local TV options

114. The Oliver & Ohlbaum analysis comprehensively demonstrates why a new Scottish Channel might not be viable without direct funding support. This probably does not come as a surprise to many. As the SBC has suggested, a new Scottish Channel might have an annual budget of **£75m** from which to meet all programming and other costs (of which news would only be a small proportion). This compares to the typical budget for a smaller local TV channel, as suggested in Ofcom/DCMS analysis, of roughly **£0.5m** per annum i.e. 150 times lower.
115. The Oliver & Ohlbaum analysis is credible but, as demonstrated below, does not apply to the model for local TV advocated by ULTV. The local TV business model is predicated on a large number of local advertisers wishing to target a relatively small geographic footprint, supplemented by UK-wide advertising sold across the whole of the network.
116. Please also see ULTV's response to question 8 below.

8) Do you agree with our analysis of the future potential for local content services?

The answer to this question should be read in conjunction with “**The case for a ‘sixth’ public service network – how Channel 6 would work**” which has been submitted to Ofcom separately by ULTV.

Options for public policy intervention

117. In most democratic countries outside the UK, television is the principal medium for the dissemination of local news. Generally, this has been the result of either direct or indirect government intervention to encourage local TV provision.
118. Ofcom has rightly identified democratic issues arising from plurality in the devolved nations but, equally, local democracy throughout the UK could be reinvigorated by local TV.
119. There is clear evidence the market has failed to deliver local TV in the UK to any significant degree, and is likely to continue to do so for the foreseeable future, without public policy intervention. The crucial question for policy makers is what degree of intervention, if any, is justifiable and appropriate to adequately remedy this high risk of continuing market failure.

The demand for local TV

120. Ofcom’s DDR Research demonstrated that local TV on Freeview was the **number one** new application demanded by consumers, ahead of both “*extra SD channels*” and “*HD on Freeview*”.³¹

Importance to you personally of services that could use digital dividend spectrum³²

Order of popularity	Application	Mean average score out of 10
1	Local TV on Freeview	6.3
2	Extra SD channels on Freeview	6.2
3	Better mobile phone coverage and mobile broadband	5.9
4	Wireless home networks	5.7
5	HD on Freeview	5.6
6	Mobile TV	3.3

121. Whilst Ofcom ultimately decided not to reserve access to any ‘DDR’ spectrum for local TV, it did commit to review the range of policies to develop local TV in the PSB Review.³³

The DDR cannot deliver universal access to local TV

122. Ofcom has said it will auction a limited number of packages of geographic interleaved spectrum in a manner “*suitable but not reserved for local television*”.³⁴ As Ofcom is aware, much of this spectrum is a supplement (or complement) for cleared spectrum. All frequencies will be technically capable of carrying up to 10 standard definition video streams (assuming DVB-T 64QAM modulation).

³¹ Ofcom (November 2007), *Digital Dividend Review Market Research 2007 Executive Summary*, London: Ofcom

³² Q8.3a “For each of these services please score each on a scale of 0 to 10, where 10 means extremely important and 0 means not at all important to you personally” (mean scores are shown). Source: Ipsos MORI survey 2007 Base: UK adults 1,049³³Ofcom (December 2007), *Digital Dividend Review – A statement on our approach to awarding the digital dividend*, London:

Ofcom

³⁴ Ibid

123. Local TV may not always be the profit maximising user of spectrum. To be successful at auction, a local TV operator would have to out-bid all other applications, including applications whose business models are predicated on aggregating local packages to provide a quasi UK service (such as that offered by Freeview today which is currently available in c.73 per cent of homes).
124. It is conceivable that, in some isolated instances, local TV operators might manage to secure access to interleaved spectrum at auction, in the market or from a Band Manager. Even in these circumstances, there would be no **guarantee** of a neighbouring local TV station with which to partner, share resources and sell regional advertising. There would also be no guarantee that a network schedule would become available to support operators. As they stand, the DDR proposals do not offer the prospect of a UK-wide local TV network available free to all.³⁵

Network scale is key to the success of local TV worldwide

125. Having reviewed the local TV market overseas, the Ofcom/DCMS analysis concluded that:

“...economies of scale, offered by larger audiences and / or by the efficiencies of a network-affiliate model, appear crucial to the commercial sustainability of local services.”

126. ULTV argues that a UK-wide network is important to support and enhance the development of local TV. ULTV also argues that access to news and information on TV should be universal as a matter of public policy – not postcode lottery. ULTV therefore calls for intervention by Ofcom and government to ensure there is a UK-wide network of local TV stations that is coordinated and made available to all UK citizens. Under ULTV’s proposal, a new type of local TV licence would be introduced to replace the analogue RSL regime. Following the Channel 3, 4 & 5 licences set out in the Communications Act 2003, ULTV has developed what have become known as the “Channel 6” proposal.³⁶

A Citizens’ Broadcasting Fund?

127. The Department of Communities and Local Government recently announced a £7.5m Empowerment Fund to support third sector projects including community media.³⁷ ULTV strongly supports this initiative and suggests the government review the advantages of establishing a permanent Citizens Broadcasting Fund (CBF) to enable groups to establish long term projects focused on providing a voice to citizens underrepresented by the broadcasting establishment. Such a fund need not be directly linked to the development of local TV, but could help enable citizens, including those most at risk of social exclusion, to participate in local communications projects.
128. Third sector organisations and programme-makers could work with others, including broadcasters and universities, to ‘top up’ funding from the CBF. Since programming would be produced primarily by volunteers, the total size of the fund need not be excessive with CBF grants paying for production equipment, training and qualified professionals to support and work with participants. Long-term funding could be provided for projects, rather than being focused on ‘one off’ productions, and show evidence of social gain as part of the application process (for instance, providing skills to disadvantaged groups). An example of projects

³⁵ The high demand for interleaved spectrum from pure commercial operators is known to Ofcom who have even gone so far to reference this demand as their main reason for not reserving provision for local TV. Ofcom states: “...there is insufficient evidence to suggest that intervention... (for local TV) is justified. ...The relatively significant opportunity costs of such an intervention, at around £400m, lend weight to this assessment...” Source: Digital Dividend Review – A statement on our approach to awarding the digital dividend, Ofcom, December 2007. Ofcom’s statement does recognise the high risk of market failure in local TV but suggests intervention be focused on the state ‘buying back’ spectrum at a premium after it has been auctioned.

³⁶ ULTV does not necessarily suggest the channel would be branded as ‘Channel 6’ but uses this term to stress the importance of being viewed by policy makers as a sixth public service network with local content commitments.

³⁷ “We will also set up an Empowerment Fund of at least £7.5m to support national third sector organisations turn key empowerment proposals into practical action.” Communities & Local Government (July 2008), *Communities in control: real people, real power*, London: The Stationery Office

suitable for funding might be an inner-city youth work initiative enabling young people to produce their own programming.

129. CBF grants could be conditional upon groups having partnerships in place with established broadcasters, including but not limited to local TV, to show a minimum number of hours of programming produced by funding recipients. The CBF could either be funded directly by government, the National Lottery or part of the Licence Fee 'switchover surplus'. ULTV notes the Communications Act made provision for a Community Broadcasting Fund and to develop such a concept would therefore require no new primary legislation.³⁸

ULTV cannot support the Page 77 proposal

130. ULTV rejects the proposal to maintain a window for nations and regions news in the schedule of an existing broadcaster (either ITV1 or an alternative digital broadcaster) as set out on page 77 of the consultation document (the "Page 77" proposal).
131. ULTV would point out that any local or regional programming not carried on a universal Freeview multiplex (i.e. not carried on relays) risks denying access to many Freeview viewers. This would include viewers in typically rural areas who might particularly benefit from access to local news and information.

The Page 77 proposal is understandably attractive to ITV plc

132. ITV plc executive chairman, Michael Grade, has suggested that a third party could be publicly subsidised to provide a nations and regions news service to ITV1. This may appear superficially attractive. ITV1 retains a popular, high-quality, programme at a time when it does not wish to place advertising minutes and with the production costs met by a third party. Furthermore, it would also make it more difficult for third parties to set up a rival local broadcast service. If a new local TV network were to emerge supported by local advertisers then this could be detrimental to ITV revenues, especially in local markets where ITV1 has an effective monopoly over all TV advertising.
133. There is no question that, given the size of audience delivered by existing nations and regions news on ITV1, revenues within these programmes could be valuable. It is notable that ITV plc is not proposing to allow a third party to have access to its schedule to provide a nations and regions news service for which they are able to retain any advertising revenue. This would provide effective competition with ITV in the supply of advertising (as advertisers would not need to go to ITV directly to buy high audience share).

Why the Page 77 proposal minimises reach and impact for local programming

134. ULTV does not accept that one half-hour regional programme is adequate to serve the needs of the UK's localities. ULTV advocates local TV services which enable innovation and experimentation, providing opportunities to new programme-makers.
135. ULTV believes it is important to fully consider why local programmes on 'Channel 6' might out-perform even the popularity of regional programmes on ITV1. The following are just a number of examples:
- Unlike ITV1, Channel 6 would make local programmes and social action the centre-piece of its output, not a burden to be scheduled in the weakest slots available.
 - Local TV would be well placed to provide compelling non-news programming covering, by way of example, local issues, history, the environment, religion, arts, social issues and sport. Local TV channels would have the flexibility in their schedule (unavailable to ITV1) to forge partnerships with local organisations to sponsor and/or contribute towards programme production costs. One of the key

³⁸ Section 359 of the CA03 envisaged the possibility of a fund to encourage community broadcasting – both radio and TV.

benefits of local TV is its ability to innovate and experiment, developing links and drawing upon local producers including community media projects. Existing RSLs carry programmes produced by and/or with universities, sports clubs, Community Service Volunteers and local authorities.

- Many ITV1 regions are artificial. A 30 minute 'opt-out' programme in a network schedule, produced to a homogenous UK-wide format, may not be the most effective means to cover local news and events. For example, in the London market local news on the BBC/ITV rarely covers the real news stories of interest in the Boroughs. In contrast, a 24 hour dedicated channel would be able to offer some targeted programmes for the major conurbations within London, offering genuine plurality and distinctiveness from the service offered by the BBC.³⁹
- Local TV would be free to repeat local programmes throughout a 24 hour period, not only increasing the opportunity for programmes to be seen but also greatly reducing the cost-per hour of programme production. In the US, local news programmes are typically shown for five hours a day, often repeating news footage, helping to drive high audience reach.

136. ULTV does not accept that 'plurality' with the BBC's provision in the nations and regions is best achieved by creating a new state-funded institution, offering an essentially similar service. ULTV believes the reach and impact for non-network programming overall would be maximised by a real alternative to BBC provision.

137. There is no reason to suggest that, in a multi-channel environment, it is beyond the intelligence or capability of a viewer to tune to a branded local TV channel to discover local news and other local programmes. Indeed, this would appear more likely to happen on a dedicated local channel than by simply reserving one half-hour 'opt out' for quasi-local programming on ITV1.

The page 77 proposal risks undue distortions to the market

138. Regardless as to whether or not nations and regions news continues on ITV1, or is transferred to a portfolio channel, the Page 77 proposal risks allowing ITV1 to maintain its dominant status in the selling of TV advertising in local markets with little or no competition. It is, in reality, a direct subsidy to ITV plc even if it does not actually cash the cheque to produce the programmes. Leaving aside the competition implications of such state aid, there would be no incentive to the programme producer to develop a sustainable business – their business would be almost wholly dependent on ongoing state funding.

139. The Page 77 proposal could be detrimental to the development of an independent network of local TV stations. The key audience driver for local TV is local news. News is an appointment to view and provides a new reason to tune in every day. By maximising its audience for news, a local TV channel maximises impacts and effectiveness for local advertisers and therefore its revenues. Critically, it provides an 'anchor' to the schedule from which it is possible to cross-promote and drive traffic to other (non-news) programmes. Local programmes on arts, culture, religion and sport will all benefit from the audience inheritance from local news. Local TV cannot benefit from sacrificing this audience inheritance to ITV1, or any other commercial rival.

140. ULTV has no objection to fair competition in the provision of local (or regional) news but does question the logic of unfair competition in the form of a rival being directly paid to produce an advertising-free window for such programming.

Plurality of local voices

141. Local TV is potentially the greatest new contribution to public service broadcasting that could be made by Ofcom and government in the coming decade. A plurality of service providers offering the same news and current affairs agenda does not deliver diversity of voice. Genuine

³⁹ As this example shows, even though some Channel 6 licence areas might be similar in size to existing regional provision from BBC1 and ITV1, the content could still be very different.

choice for the viewer is achieved by delivering a diversity of citizens' voices, including direct access by citizens to airtime to make their own programming. Every citizen, no matter where they live, could have their own local Channel 6 keeping them informed of local news and enabling them to participate in local debate. Channel 6 would provide a positive legacy of digital switchover.

The case for local TV is here and now

142. Ofcom's 2008 PSB research shows that **86 per cent** of all adults want more non-news programming about their region/area than shown on the main channels.⁴⁰
143. The RSL local TV licensing regime was put in place by the previous Conservative administration in the hope that the Independent Television Commission would identify appropriate frequencies to enable local TV channels to develop across the UK. This dream was far from realised but **never** has any government suggested the development of local TV should be linked to the level of regional provision on ITV1.

Time for action

144. As channels and choices continue to proliferate a new local TV sector is capable of providing a local voice that fulfils all main objectives of public service broadcasting – informing ourselves, reflecting cultural identity, increasing knowledge and supporting tolerance. By providing opportunities for training, employment, local advertising and public participation Channel 6 would be able to empower viewers, not only enabling them to feel part of the media but also more involved in their own area.
145. As Ofcom's analysis demonstrates, non-news regional programming has already declined substantially on ITV1, falling 44 per cent between 2003 and 2007. In its first PSB Review, Ofcom referred to the decline of regional programming as a "**self-fulfilling prophecy**". Ofcom acknowledged that the provision of low-quality regional programming, never promoted and/or scheduled in weak slots, directly led to low audience levels. ITV1 appears on course to now repeat history with its regional news – reducing quality to the point where it can claim audiences no longer demand a service.
146. The success of Freeview provides an opportunity to Ofcom and government not merely to maintain the status quo, but to replace it with something closer to the wishes of the audience. The Channel 6 proposal offers local news, local programming and local advertising to all UK citizens and at minimal incremental cost to the Treasury. There is no good reason to make citizens wait any longer for the one new application for which Ofcom's research shows highest demand – local TV on Freeview.

Section 6: Funding

9) Do you agree with our assessment of each possible funding source, in terms of its scale, advantages and disadvantages?

Regulatory assets have few disadvantages

147. ULTV broadly agrees with Ofcom's assessment of each possible funding source with the exception of regulatory assets which, ULTV believes, requires further consideration.⁴¹
148. Regulatory assets have proven to be a reasonably flexible source of funding support for PSB. In recent years Ofcom has reduced the licence fees paid by Channels 3 and 5, adjusted their programming obligations to meet new circumstances and granted access to additional spectrum for HD services. None of this is evidence of lack of flexibility. There is no reason to

⁴⁰ Ipsos MORI (April 2008), *The audience's view on the future of Public Service Broadcasting*, Q35, 2,260 interviews with all UK adults aged 16+, October – December 2007

⁴¹ There are, in practice, only two forms of funding: direct and indirect. If further direct funding is required in the future then its source is ultimately a matter for government and parliament and ULTV reserves judgement at this time.

suggest that direct funding, which would inevitably come with similar obligations to indirect funding, would be any more flexible in practice.

149. The main advantage of regulatory assets are, in truth, their lack of flexibility. Once a licence is granted it is difficult to revoke, except in the most extreme of circumstances. This offers stability and certainty for service providers. In contrast, reliance on direct funding risks leaving services at the whim of changes in government policy or the state of national finances. Whatever the governance arrangements designed to secure independence, it is inevitable that service providers would be continuously seeking to lobby for funding and this could risk impacting on editorial. It is no coincidence that many commentators remark how the BBC tends to behave differently around the time of Charter Renewal. If more than one PSB was competing for access to the same licence fee, as well as the BBC, this problem could be accentuated.

If regulatory assets reduce in value, this has implications for all broadcasters

150. Ofcom has argued that regulatory assets may become less appropriate in the future because their ongoing value may be more difficult to determine. It may be true that the value of regulatory assets will diminish over time, and this may require ongoing re-assessment of public policy intervention. However, all policy interventions require ongoing monitoring and reassessment. Whatever intervention is agreed, direct or indirect, cannot be fixed in stone for all time.
151. The implications of spectrum diminishing in value are so significant it is difficult to predict what policy intervention, if any, may be appropriate at that time. It is conceivable that, at that time, new business models will enable public service programming to be universally distributed to an extent not possible in the current market. If this were to happen then all intervention to support universal free-to-air broadcasting would require comprehensive reassessment. It may well be that the BBC has a particular role to play in the future navigation and distribution of public service content, for instance by sharing its technology with other broadcasters (subject to appropriate regulatory oversight).
152. There is good reason to believe regulatory assets will have long-term value, even if this does ultimately diminish over time. There is a strong argument for dedicated digital services (such as local, arts, news, sport, factual and children's services) being granted reserved access to Freeview to ensure a diversity of services to all UK citizens. Indeed, it is difficult to understand why Ofcom and government are reserving 70 per cent of analogue TV spectrum for Freeview if they see minimal long-term value in this platform.

The value of Freeview is appreciating

153. There is no reason to believe Freeview capacity will diminish in value any time soon – Ofcom's assessment shows it has appreciated in value since the first PSB Review. Ofcom predicts that regulatory assets will have a continuing high value in the short term:

“These assets will fund investment of around £185 million in public service content by the commercial PSBs in 2012.”⁴²

154. Further, Ofcom's calculations **ignore** the value of multiplex B capacity gifted to the commercial PSB's HD services. These could prove to be increasingly valuable. Many of the incumbent PSB operators have argued that HD will become the 'default' standard for TV viewing. It is extremely likely that Multiplex B will be the only free-to-air HD broadcasts available to all UK citizens on the DTT platform for the foreseeable future. Ofcom's calculations appear flawed if they ignore the value of this capacity.

The concept of “commercial” multiplexes is artificial

155. Freeview viewers have no interest in whether they are watching a programme on a 'PSB' multiplex or a 'commercial' multiplex. The artificial categorisation of multiplexes by Ofcom is

⁴² Paragraph 6.19 of the consultation document

without foundation – all Freeview multiplexes use spectrum gifted by government for the fulfilment of broadcast policy objectives.

156. Ofcom's assessment of the value of regulatory assets gifted to commercial PSB (£185m in 2012) **excludes** the value of regulatory assets granted to 'commercial' multiplex operators. If Ofcom were to **double** the regulatory assets gifted to PSB operators by taking capacity to this value back from SDN/ITV and NGW/Arqiva, then the value of PSB spectrum would be £370m. This is roughly the same as it is today.
157. The only difference between a 'PSB' multiplex and a 'commercial' multiplex is that the latter have less onerous coverage obligations than the former. It is therefore important that households who do not have access to all six Freeview multiplexes are able to acquire Freesat which complements Freeview by carrying a full bouquet of UK-wide services. Freesat was deliberately given approval by the BBC Trust on the basis it would 'fill in' gaps in Freeview carriage – it does not replace the necessity for any new PSB entrants to gain access to Freeview to maximise their viability.

There two main sources of funding

158. There are two sources of public funding to support PSB – direct and indirect. The alleged benefit of direct funding is that it allows 'divisibility' – so that the level of funding can be varied over time to encourage more or less provision. However, it is notable that Ofcom has not once promoted this benefit because it does not intend to use it. Under Ofcom's proposal for long-term transferable funding, fixed funding contracts would be awarded to a supplier following a beauty parade procedure (potentially not dissimilar to a radio licence application).
159. Ofcom's analysts offered the following critique of regulatory assets:

*"The UK systems reliance on regulatory assets rather than direct funding to support public service delivery of commercially funded channels has had the significant benefit of more or less ensuring high reach and impact (in terms of the allocation of scarce analogue and digital terrestrial capacity). However, the system has had the disadvantage of being insufficiently granular in nature to be targeted at specific public service goals or content."*⁴³

160. In the past, the UK licensed 'mixed genre' PSBs with programming quotas. This system is breaking down as it is unreasonable to expect only the incumbent PSB operators to meet all demand for PSB in a multichannel environment. Freeview gives Ofcom and government the opportunity to licence new dedicated digital channels, using regulatory assets to achieve specific public service goals or content.

Ofcom's research supports regulatory assets

161. Since the publication of the Spectrum Framework Review, Ofcom appears to have become ideologically opposed the use of granting access to spectrum to fund public service broadcasting.⁴⁴ This is surprising, since the government's independent review of spectrum specifically supported reserving it for both existing and new public service broadcasters.⁴⁵ Ofcom must not allow its own ideology to prejudice objective policy making.
162. According to Ofcom, support for gifted spectrum to fund PSB rated highly in deliberative research but was "*not perceived as (a) sustainable long-term funding option as (its) value (is) declining.*" ULTV has never advocated government by focus group. However, if Ofcom wishes

⁴³ Oliver & Ohlbaum (September 2008), *Incentives in PSB delivery and implications for PSB models – an assessment by Oliver & Ohlbaum Associates for Ofcom* (page 2), London: Oliver & Ohlbaum Associates

⁴⁴ Ofcom states in its consultation, *Spectrum Framework Review*, (November 2004): "Ofcom is generally not in favour of spectrum allocation and assignment being used as a mechanism to achieve social policy." London: Ofcom

⁴⁵ "The review recognises therefore the need for Ministers to retain a strategic power of direction over Ofcom in order to reserve spectrum allocations for identified uses or users to fulfill public policy goals... Most importantly, the Government has powers to ensure that all current **and future** public service broadcasting channels remain available to all households, if necessary, by reserving digital multiplex capacity for them." Source: Cave, Prof. Martin (2002), *Review of Radio Spectrum Management, An independent review for Department of Trade and Industry and HM Treasury*

to rely upon citizen juries to inform public policy then it must allow a fair trial. It must call a range of witnesses and enable them to be cross-examined. Simply giving respondents an Ofcom-written presentation and asking them for comments does not constitute qualitative research. Nevertheless, it is quite clear the greatest demand in Ofcom's research was for regulatory assets to be used to fund PSB.

163. Please also see the response to question 10, below, which examines the funding options further.

10) What source or sources of funding do you think are most appropriate for the future provision of public service content beyond the BBC?

Regulation of Freeview is the most appropriate mechanism to enhance PSB in the short to medium term

164. The consultation document values regulatory assets gifted to all commercial PSBs at £185m in 2012 made up as follows:

ITV plc	£45m
Channel 4	£80m
Five	£50m
Other Channel 3 licensees	£10m
TOTAL	£185m

165. There is no serious question this funding is adequate, in aggregate, to pay for a high quality news service for the UK and devolved nations, together with other core PSB commitments such as out-of-London production. It would appear inappropriate for Ofcom to simply give up this vital source of PSB plurality.
166. Ofcom estimates that the value of regulatory assets may fall further after 2012/2013. However, it does not substantiate these estimates with evidence. It is reasonable to assume that, once analogue TV is switched off, the value of regulatory assets may stabilise. If anything DTT capacity could increase in value as increasing numbers of households convert their secondary sets to Freeview.
167. It is not only regulatory assets which can adjust in value over time. All markets develop and change. If Ofcom and government were to issue direct funding contracts there would be no absolute guarantee that this would be adequate to meet the purposes intended which could depend on a wide range of factors including costs, competition, advertising markets and other supplementary sources of income.
168. It is conceivable that regulatory assets will eventually diminish in value. It may become increasingly difficult to 'bribe' mixed genre broadcasters such as ITV1 and Five to provide PSB programming. However, there may still be a case for granting regulatory assets to dedicated digital services such as local, childrens, arts and factual services. These are services which might still benefit significantly from access to Freeview and EPG priority status even if when the value of regulatory assets does diminish.

Now is not the time to be abolishing regulatory support for PSB

169. There are a number of difficulties with making policy decisions based on Ofcom's analysis. Perhaps the most critical sentence in the whole of the consultation document is in paragraph 6.17:

"Clearly these are highly provisional, indicative estimates. They are necessarily subject to a wide margin of error."

170. To take radical decisions to completely abolish all commercial PSB licences (other than possibly Channel 4's) on the basis of highly uncertain estimates about what might happen in more than half-a-decade would be a high risk strategy for the government.

171. If regulatory assets significantly fall in value post DSO this is likely to suggest that barriers to entry in the broadcasting market are falling – a factor which could significantly improve the opportunities for new public service entrants to emerge. It would therefore be unsound for Ofcom to make any recommendations to government on the basis of such a supposition.

‘Commercial’ multiplexes are gifted spectrum

172. The UK’s three ‘commercial’ multiplex operators have been gifted valuable regulatory assets, but with no reciprocal PSB obligations. It is therefore hardly surprising that there is a risk of PSB under-supply from the resultant services. Ofcom and government have powers to ensure these regulatory assets are used to achieve PSB purposes.
173. The licensing of dedicated genre channels effectively eliminates opportunity cost calculations for broadcasters, since they are not free to abandon one genre for another. Their licence would be specifically to provide a genre at risk of being undersupplied (e.g. local, news, factual, arts or children’s programming).

The value of regulatory assets may be higher to new entrants

174. ULTV understands that Ofcom has made assumptions about the value of regulatory assets to the incumbent PSB operators. For example, in the case of ITV plc, their services are likely to continue to obtain a high audience even without PSB status. However, this may not apply to an entirely new PSB entrant.
175. For new entrants, ‘must carry’ status on Freeview and cable and EPG priority could be far more valuable than to the incumbent PSB operators. It is therefore important that Ofcom does not under-value the benefits of regulatory assets to new PSB entrants when reviewing policy options.
176. Ofcom had identified the valuable contribution of Teachers TV whose mission is to support the government’s national curriculum in England; and the Community Channel, an initiative of the Media Trust, which receives backing from the Cabinet Office as well as the major broadcasters. However, neither Teachers TV or the Community Channel have been able to obtain peak-time Freeview capacity and both have suffered from poor EPG positions, demonstrating the value of regulatory assets whatever the funding model adopted. The Community Channel loses its Freeview capacity at DSO.

Maximising regulatory assets to deliver PSB purposes

177. Ofcom’s deliberative research implies the public does not wish to see regulatory assets granted to operators who do not provide reciprocal PSB benefits. Ofcom states:

“Participants were concerned to ensure that any providers receiving spectrum benefits were committed to providing public service content and that they would spend the exact amount equivalent to spectrum benefits on doing so.”⁴⁶

178. In light of this research finding, Ofcom may wish to recommend to government that it consider imposing new PSB obligations on ‘commercial’ Freeview operators who are currently gifted spectrum with no reciprocal PSB obligations. It appears moderate and sensible to suggest this spectrum be used, in part, to meet PSB purposes.
179. For example, Ofcom could recommend that at least two SD video streams are made available for PSB purposes on all ‘commercial’ multiplexes. In the case of Multiplex A (now owned by ITV plc), there has traditionally been an obligation to reserve capacity for Five’s services in the UK and S4C in Wales. In the case of Multiplexes C and D (now owned by Arqiva), there are no such obligations but the government could require that the capacity ‘freed-up’ by mode change at DSO is granted to new PSB entrants identified by Ofcom. The carriage costs could be met

⁴⁶ Paragraph 6.31 of the consultation document

by the multiplex operators in return for the right to continue to exploit the remaining multiplex capacity for private gain.

AIP is not incompatible with imposing PSB obligations

180. Ofcom has not yet decided whether or not to introduce AIP on 'commercial' Freeview operators although it has indicated that, should it do so, this will not be before the end of 2014. This means operators can enjoy around another half-a-decade of 'free' spectrum (if not more).⁴⁷
181. Even if Ofcom does eventually introduce AIP, it has already said this is unlikely to represent more than about a third of the true market value of the spectrum gifted to multiplex operators. There is therefore no reason why the possible implementation of AIP should be incompatible with imposing targeted and proportionate PSB obligations on **all** Freeview multiplexes.

There may be some justification in using the 'surplus' licence fee to support specific citizens' broadcasting and other public policy projects

182. ULTV strongly supports the BBC's role at the heart of PSB, including its potential to forge partnerships to support non-BBC providers of PSB content.
183. ULTV shares the concerns, widely expressed, that 'top slicing' the licence fee for the benefit of its commercial competitors could undermine the purpose of the fee itself. An established principle of the UK broadcasting ecology is that the BBC competes against other broadcasters for audience, not revenue. This principle could be at risk if the BBC has to compete for access to the licence fee with commercial broadcasters or programme makers.
184. ULTV believes that reservation to the general principle of 'top slicing' need not necessarily preclude consideration of the use of the 'switchover surplus' identified for Ofcom for specific projects or causes, such as the funding of PSBs universal service obligations, the switchover help scheme, S4C commissioned programmes, a dedicated Scottish Channel or, possibly, even a contribution towards a Citizens' Broadcasting Fund. Any such proposal would need to be subject to detailed review. However, potentially, an effective and accountable 'support fund' might not undermine the basis of the licence fee, but help further enhance its justification.

Protecting the BBC at the heart of PSB

185. For the avoidance of doubt, ULTV holds strong reservations about using the licence fee to support a general 'arts council of the air', funding content that would compete directly with content that might typically be expected from the BBC. Although some might see contestable funding as a method to reduce the size and scope of the BBC, this proposal does appear to be at risk of seriously reducing the overall level of funding for PSB provision, "robbing Peter to pay Paul". Members of ULTV instinctively oppose any proposal which could damage the status and future of the BBC at the heart of PSB provision.
186. ULTV refers Ofcom to the answers given in response to Section 5 of the consultation document (questions 1-4).

11) Which of the potential approaches to funding for Channel 4 do you favour?

The advantages of protecting access to spectrum

187. ULTV believes that public support for Channel 4 should be focused on the continued provision of regulatory assets. If it is considered that Channel 4 (rather than another party) is better placed to invest in original UK programming in certain public service genres, then it could be gifted additional Freeview capacity to meet this purpose.

⁴⁷ Ofcom states: "the right time to introduce charging for spectrum used for digital broadcasting – both television and radio – is the end of 2014...If it seems likely that there could be material detriment to citizens or consumers from the effects of AIP on broadcasting output, there are a number of ways available to Ofcom.... to address this... these means could include potentially not introducing AIP..." Ofcom (June 2004), *Future pricing of spectrum used for terrestrial broadcasting – statement*, London: Ofcom

188. If Channel 4 were, for instance, gifted free capacity on multiplexes C or D in addition to its assignments on multiplexes 2 and B, this would represent a significant intervention to ensure the state-owned broadcaster is able to compete effectively in the market post-DSO. Indeed, the provision of similar regulatory assets was (until recently) the main request of Channel 4's CEO, Andy Duncan, before the publication of the extremely ambitious *Next on 4* proposals.
189. Regulatory assets have a number of significant advantages over direct funding, particularly if supported by EPG priority status:
- Channel 4 remains directly responsible for its own destiny – whether or not it is profitable depends upon the continued success and popularity of its PSB programming, not merely its ability keep its PSB costs below the level of state funding granted to it;
 - Channel 4 would be less likely to be forced to compromise its independence, allowing it the freedom to remain irreverent and edgy which it enjoys precisely because it is **not** the BBC funded by a compulsory licence fee;
 - provision of regulatory assets is a proven and generally acceptable form of state aid to fund commercial broadcasters.

The European Commission generally supports direct funding to meet universal service obligations for public service broadcasters

190. There is an argument that universal service obligations are a public policy goal the cost of which should be paid for from the public purse. The European Commission has already accepted this argument in principle saying it would view favourably:

“financial compensation to public service broadcasters for the cost of broadcasting via all transmission platforms in order to reach the entire population, provided this forms part of the public service mandate.”⁴⁸

The main options for funding Channel 4

191. ULTV suggests that public support for Channel 4 continues to be focused on regulatory assets, together with appropriate contributions towards the costs of universal service obligations. This could potentially be enhanced by other forms of indirect support, including cooperation and resource-sharing with the BBC (subject to appropriate oversight).
192. If, ultimately, Ofcom and government feel it is desirable to establish some form of 'PSB fund' to support under-served genres, ULTV believes this should be contestable and open to all appropriate broadcasters and not just Channel 4.

Section 7 and annex 1: Matters for short-term regulatory decision

12) Do you agree that our proposals for 'tier 2' quotas affecting ITV plc, stv, UTV, Channel TV, Channel 4, Five and Teletext are appropriate, in the light of our analysis of the growing pressure on funding and audiences' priorities? If not, how should we amend them, and what evidence can you provide to support your alternative?

ULTV understands the logic of Ofcom's proposals

193. ULTV accepts Ofcom's proposals for changes to 'tier 2' quotas are based on 'real politik' and, in particular, a desire to minimise the risk of ITV plc withdrawing from the ITV network (although whether ITV plc could withdraw network programming from the minorities given its merger undertakings was not addressed in the PSB Review itself).

⁴⁸ <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/05/1394>

194. ULTV accepts that ITV1 has adopted a business model predicated on network programming. This is in stark contrast to local TV services around the world who seek to maximise the airtime provided to local news – exploited as the major profit centre. Unlike ITV1, local TV channels tend to show local news for up to five hours a day, thereby reducing its cost per hour and maximising commercial impacts for advertisers.
195. In England, Ofcom proposes to allow ITV1 to effectively abolish dedicated non-news programming by simply requiring an average of 15 minutes a week of non-news content to be amalgamated within news programmes. It is notable how Ofcom's deliberative research showed little or no enthusiasm for any of the proposals, albeit there did appear to be some recognition of the inability of the regulatory to prevent ITV plc from acting however it wishes.⁴⁹

Further cuts are to be expected

196. It is notable that Ofcom accepted ITV plc's proposals partly because ITV's management threatened to find £40m of savings from regional news even if it did not.⁵⁰ However, at the Ofcom PSB conference in Salford on 25 November 2008, Michael Jeremy, Director of ITV News & Regions, said that even the proposed new resource levels "*may be impacted in the future by the advertising market*". In other words, there is a strong risk ITV plc will make further cuts to resource levels after Ofcom has given its final approval to the new super-regions. Ofcom will have no power to prevent such cuts
197. This would be a repeat of the strategy which former ITV plc management adopted to withdraw from non-news regional provision. In what appeared to be a calculated policy, ITV progressively reduced costs and quality of non-news output until such time as it could demonstrate the audience no longer valued these programmes. With poor levels of audience appreciation, the regulator eventually acquiesced in releasing the obligations. Given that ITV plc has effectively written-off advertising in its regional news, it is arguably in its interests to progressively reduce funding and quality between now and the next PSB Review in 2011. At that time ITV plc can hope the audience is so diminished it is able to drop the programmes in their entirety.
198. The ITV1 regions were always a 'fudge'. ITV1 is not perceived as a local channel and not turned to for local non-news programming. ULTV advocates local TV as a universal service available free to all citizens. A dedicated local 'Channel 6' is now the most realistic prospect of developing the full range of local programming demanded by citizens throughout all parts of the UK and making it universally available to all citizens.
199. ULTV would welcome the opportunity to work with Ofcom and government to seek to realise this vision.

United for Local Television

4 December 2008

A ULTV briefing paper, "A 'sixth' public service network for the UK – how Channel 6 would work" has also been submitted to Ofcom under separate cover.

⁴⁹ Further, Ofcom's researchers note that: "Among those who were **indifferent** to the proposed mergers, respondents commonly mentioned that...although interested in local and regional news, their current TV regional news provision was very poor which had already pushed them to find news from other sources and platforms..." Essential Research (July 2008), *Assessing the likely impact of ITV's regional news proposals Final Report*, London: Essential Research Ltd

⁵⁰ In paragraph A15.21 of the Impact Assessment Ofcom states: "ITV has stated that the alternative to implementation of restructured regional news proposals would be an across the board cut in its regional news expenditure of equivalent size to the savings from these proposals. Ofcom believes this outcome would be significantly worse for viewers..."

Meeting audience demand

Providing a voice to local communities

The size, scale & support to be viable

That's why over 150 MP's are now backing the **Channel 6 proposal:**

“That this House congratulates Ofcom in finding a means to deliver local television to every household across the UK on Freeview; and looks to the Department of Culture, Media and Sport to introduce a licence for the provision of local public service television during the rollout of digital switchover.”⁵¹

⁵¹ Early Day Motion 1013, Local Public Service Television, Stewart, Ian (21 February 2008)

We Believe

- In a free and fair society at least one channel should be a local channel representing the views and opinions of local people.
- Local TV, more than any other resource, has the potential to educate people about the issues that directly affect their lives.
- The evidence of demand for both local TV and enhanced SD plurality on Freeview is overwhelming.
- Ofcom and government must now work together on a local TV order, introducing a 'sixth' public service network throughout the United Kingdom

Further information

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Annex

ABOUT UNITED FOR LOCAL TELEVISION

United for Local Television (ULTV) is an umbrella group representing a broad range of local television practitioners, advocates and voluntary organisations from the commercial, community and municipal sectors.

United for Local Television believes the potential economic, social and democratic benefits of local TV are of such a magnitude that a new network should be granted 'public service' status with guaranteed access to Freeview capacity alongside incumbent PSB operators.

United for Local Television further believes access to interleaved frequencies must be protected by Ofcom (or any future Band Manager) to enable local TV to develop smaller-scale services at the hundreds of DTT relay sites in use across the UK.

DISCLAIMER

ULTV consultation responses are approved by the ULTV Management Committee representing a cross-section of the ULTV membership. The purpose of ULTV is to represent the consensus views of its membership. Whilst all ULTV members are committed to the aims and purpose of the coalition, it should not be assumed that all members will necessarily agree with every view or opinion expressed within consultation responses.

FULL ULTV MEMBERS (DEC 2008)

Local TV Restricted Service Licence (RSL) holders – ULTV represents 13 out of 14 of the current RSL licences in the UK:

- Capital TV, Media4Creative (1 RSL – Cardiff)
- Channel 9 TV, North West Television (3 RSLs – Derry, Coleraine, Limavady)
- MATV, Midlands Asian Television (1 RSL – Leicester, Virgin and Sky)
- SIX TV, Milestone Group (5 RSLs – Oxford, Fawley, Southampton, Portsmouth and Reading)
- York TV and Norwich TV, EBS Newmedia (2 RSLs – York and Norwich)
- NvTv, Northern Visions (1 RSL – Belfast)

Community and local TV operators and campaigners:

- Association of Community Television Operators (ACTO)
- Channel Seven Television
- Community Media Association
- Media Access Projects Scotland
- Institute of Local Television
- Mimir-Rushes
- Peter Williams Television
- Rural Media Company
- Somerset Film
- Soutwark TV & Community TV Trust
- Station House Media Unit, Aberdeen

PUBLIC VOICE AND ULTV

Public Voice is the UK's leading coalition campaigning for citizen's interests in communications policy. United for Local Television has established a working agreement with eight members of the Public Voice Steering Group to cooperate and campaign on local TV issues in 2008. The terms of the working agreement state that "*Public Voice and ULTV believe that in a free and fair society at least*

one channel should be a local channel representing the views and opinions of local people.” On the ground a number of organisations represented by Public Voice members work with existing RSL licence holders.

Public Voice Steering Group Members:

- Association of Chief Executives for Voluntary Organisations
- Broadcasting Support Services (BSS)
- Community Media Association (CMA)
- CSV (Community Service Volunteers)
- Media Trust
- IBT (International Broadcasting Trust)
- National Council for Voluntary Organisations (NCVO)
- Timebank