

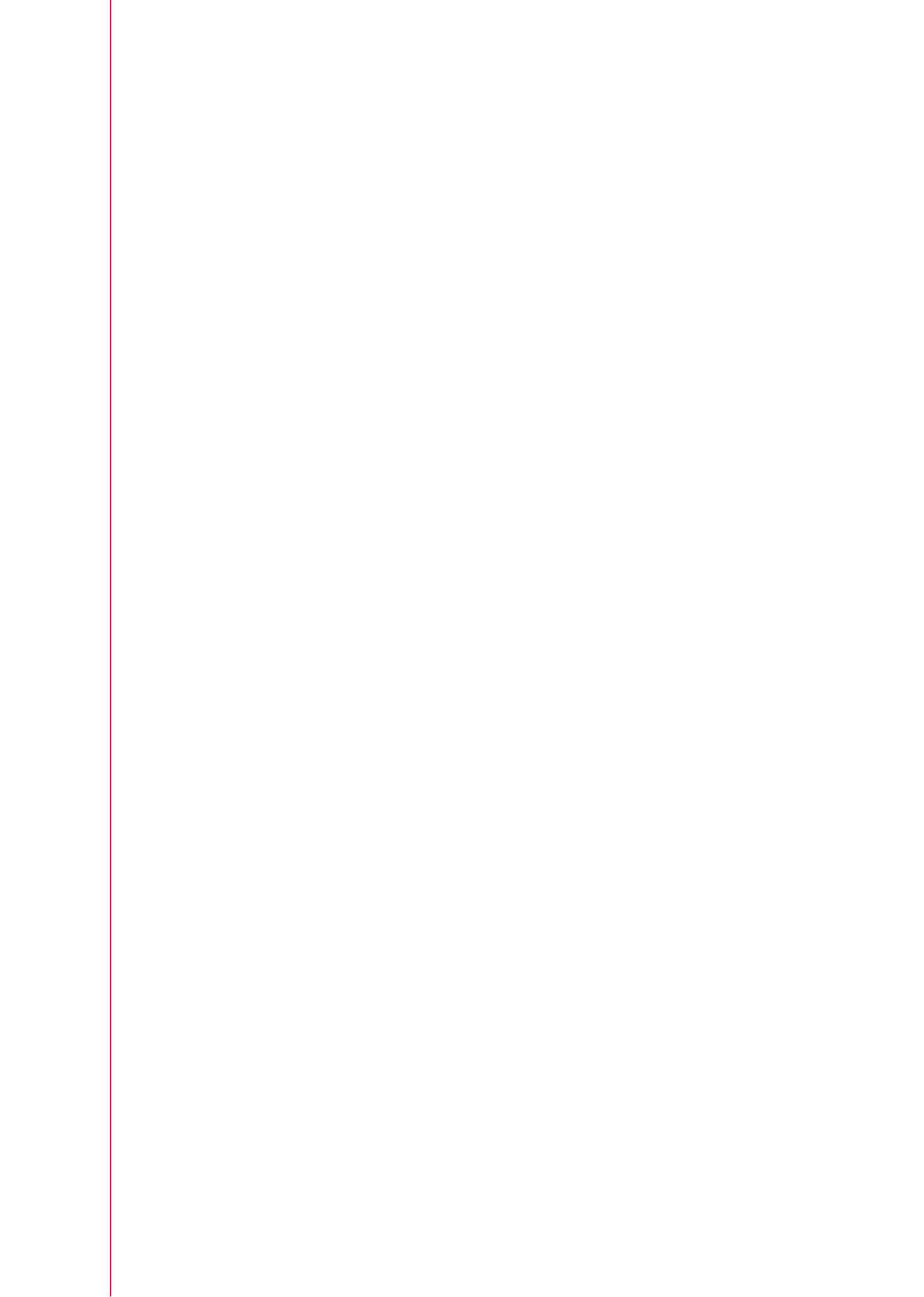


Invitation to Apply for an L-DTPS Licence

Phase 2 Locations

*Barnstaple, Basingstoke, Derry/Londonderry,
Gloucester, Guildford, Limavady, Luton, Maidstone,
Plymouth, Reading and Salisbury*

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Section 1

L-DTPS licences – Invitation to Apply

- 1.1 Pursuant to Section 18(1) of the Broadcasting Act 1996, as amended by the Local Digital Television Programme Services Order 2012, Ofcom is publishing this Notice inviting applications for local digital television programme service (“L-DTPS”) licences for each of the following 11 locations: Barnstaple, Basingstoke, Derry/Londonderry, Gloucester, Guildford, Limavady, Luton, Maidstone, Plymouth, Reading and Salisbury. There is only one licence for each location.
- 1.2 An L-DTPS will have sufficient capacity at its location for one standard definition digital television service on the local multiplex, the licence for which was awarded to Comux UK in January 2013.
- 1.3 The deadline for applications for each licence is 5pm on 7 January 2014.
- 1.4 This Invitation to Apply (“ITA”) sets out the licensing process for applicants, including information on the main statutory requirements that have to be met and guidance on how to apply for the licences.
- 1.5 Applicants must complete an Application Form and a Financial Information Checklist. These are available on the Ofcom website at <http://licensing.ofcom.org.uk/tv-broadcast-licences/local/apply>. They should be completed electronically and emailed to local.tv@ofcom.org.uk by the closing date, along with any necessary supporting documentation. Applicants wishing to apply for more than one licence must complete a separate application for each L-DTPS licence.
- 1.6 Each application should be accompanied by the payment of the application fee of £2,500 which should be made by either BACS or CHAPS into the Ofcom bank account. Further details on payment can be found at 2.28, below.
- 1.7 Ofcom’s Statement on Licensing Local Television, published on our website, sets out Ofcom’s broad policy approach in this area.¹ Other supporting information may be found in other publications by Ofcom and other parties, web links for which are given in this document. These include the Ofcom Broadcasting Code² and associated guidance; the Advertising Standards Authority’s Code; etc.
- 1.8 The statutory framework for awarding L-DTPS licences, and the obligations to be met by licensees, are set out in the Broadcasting Act 1990 (the ‘1990 Act’), the Broadcasting Act 1996 (the ‘1996 Act’), and the Communications Act 2003 (the ‘2003 Act’) as modified by the Local Digital Television Programme Services Order 2012 (‘s.244 Order’) (as amended by The Broadcasting (Local Digital Television Programme Services and Independent Producers) (Amendment) Order 2012).³
- 1.9 Ofcom reserves the right to alter or correct any part of this ITA at any stage before the closing date for applications. Any additional documents referred to in this ITA may also be amended from time to time. Any such alterations, corrections or

¹ <http://stakeholders.ofcom.org.uk/binaries/consultations/localtv/statement/local-tv-statement.pdf>

² This is referred to as the ‘Standards Code’ in the L-DTPS licence and definitions.

³ http://www.legislation.gov.uk/uksi/2012/292/pdfs/uksi_20120292_en.pdf and http://www.legislation.gov.uk/uksi/2012/1842/pdfs/uksi_20121842_en.pdf

supplementary information will be made available on our website (www.ofcom.org.uk).

- 1.10 The information given in this ITA is not an exhaustive account of the statutory and licensing requirements and should not be regarded as a complete and authoritative statement of the law. Nor does any information we issue, whether in this ITA or elsewhere, imply any judgement by us as to the commercial prospects for the applications, or the profitability of the licensed services. All applications are made at the applicant's own risk. Applicants should take their own legal advice on all information contained within this document.

Section 2

Applying for an L-DTPS licence

- 2.1 This document should be read in conjunction with the L-DTPS licence application form and associated application documents. Where sections in this document are particularly relevant to particular sections of the application form, this is indicated by reference to the number of the relevant section(s) of the application form.
- 2.2 This section sets out the application and award process, along with general guidance on how to complete the Application Form.
- 2.3 Information about other platforms and types of licence is also included here, as well as information on position and prominence of L-DTPSs on Electronic Programme Guides (“EPGs”).

Approach to advertisement of Phase 2 locations

- 2.4 In May 2012 Ofcom invited applications for the first L-DTPS licences at 21 locations across the UK. At the same time, Ofcom invited applications for the licence for the local multiplex to broadcast these and any further L-DTPSs.
- 2.5 Ofcom received applications for 19 of the 21 L-DTPS locations advertised and has awarded licences in all these locations. The local multiplex licence was awarded to Comux UK in January 2013 and it will be required by its licence to cover these 19 locations. In its application, Comux UK also proposed to cover 30 additional locations.
- 2.6 In March 2013, we invited expressions of interest for a Phase 2 L-DTPS licensing round, covering these 30 locations.
- 2.7 Based on the expressions of interest we received, we have decided to advertise these further locations in several stages, in order to try to reduce time between the closing date for applications and the date of award, and to allow applicants to reflect their very latest circumstances in their applications.
- 2.8 Therefore, in June 2013 we invited applications for seven locations: Bangor, Cambridge, Middlesbrough, Mold, Scarborough, Swansea and York. The deadline for applications for these locations was 11 September 2013.
- 2.9 We have now moved to advertise the next tranche of licences from the list of locations for which we sought expressions of interest and which Comux UK has agreed to cover. We are only inviting applications at this time for L-DTPS licences for each of the following 11 locations: Barnstaple, Basingstoke, Derry/Londonderry, Gloucester, Guildford, Limavady, Luton, Maidstone, Plymouth, Reading and Salisbury. We intend to advertise the remainder of the group of 30 in a further stage in 2014.
- 2.10 We received expressions of interest for 11 further locations where we have already determined technical feasibility. We also received expressions of interest in a number of other locations for which we have not determined technical feasibility. We will consider whether to advertise licences for any of these further locations once we have finished licensing these Phase 2 locations.

Locations and predicted coverage

- 2.11 For each of these 30 locations we are defining an area with a specified minimum level of DTT coverage. We have named each location after the principal conurbation within that area.
- 2.12 The minimum coverage is specified by the Coverage Note published on our website. The Coverage Note can be found here: <http://licensing.ofcom.org.uk/tv-broadcast-licences/local/>.
- 2.13 The Coverage Note gives predicted coverage using three different transmission modes or QPSK rates. In our Statement we recommended that the local multiplex licensee should use QPSK rate 3/4, and predicted coverage in households based on this transmission mode is given in Annex 2.
- 2.14 However, applicants should note that the predicted coverage maps in Annex 1 are modelled using QPSK rate 2/3, which could result in a slight increase in coverage compared to rate 3/4. The modelling indicates that any difference in coverage between the two transmission modes would be small, and applicants can still assume coverage broadly equivalent to that predicted in the maps in Annex 1 when drafting their applications.
- 2.15 Applicants should note that successful applicants will only be entitled to coverage equivalent to the predicted minimum for each location. It may be possible to improve coverage in some areas, but the local multiplex licensee is not obliged to do so.
- 2.16 The processes by which the local multiplex licensee and the L-DTPS licensee can negotiate changes in coverage at each location are set out at 5.19. As these discussions will necessarily take place after licence award, the licence application process must be based on the specified minimum coverage.

Merged areas

- 2.17 Over the course of the summer of 2013 we published two consultations⁴ on merging some of these 30 coverage areas into one licensed area, where we had received specific requests to do so. We consulted on merging the Maidstone and Tonbridge coverage areas; the Gloucester, Hereford and Malvern coverage areas; and the Luton and Bedford coverage areas.
- 2.18 Following these consultations, we decided to merge these areas to form the 'Maidstone' coverage area, the 'Gloucester' coverage area, and the 'Luton' coverage area respectively. We are advertising all of these merged areas in this Invitation to Apply. Applicants should consult the coverage maps of these mergers carefully for details of the coverage areas as they are all served from two transmitters, which may have transmission footprints that are not contiguous.

⁴ June 2013: <http://stakeholders.ofcom.org.uk/consultations/invitation-merging-local-tv/>; August 2013: <http://stakeholders.ofcom.org.uk/consultations/merging-further-local-tv/>

Application process and documents

Submission of applications

- 2.19 Applicants must complete a separate application for each L-DTPS licence they wish to apply for. The application documents can be found at:
<http://licensing.ofcom.org.uk/tv-broadcast-licences/local/apply>.
- 2.20 Applicants must comply with all the requirements set out in this document, the Application Form and the Financial Information Checklist. Failure to do so may render the application liable to disqualification.
- 2.21 The application fee is not refundable under any circumstances.
- 2.22 One electronic copy of the completed application, along with the supporting documentation also in electronic format⁵, must be submitted to Ofcom via email to local.tv@ofcom.org.uk, no later than 5pm on the closing date.
- 2.23 Applications received after this time will not normally be accepted. Applicants should bear in mind that email may be unreliable and are therefore strongly advised to submit applications at least 48 hours in advance of the deadline. Further, applicants should note that files over 15 MB may not be received and should plan their submissions accordingly. We will confirm receipt of applications by email reply.
- 2.24 If there is a difficulty with submitting applications electronically, applicants should contact local.tv@ofcom.org.uk to enquire about alternative ways of submitting, but we would consider these only in exceptional and justified circumstances.

Application documents

- 2.25 An application must include:
- 2.25.1 A completed Application Form;
 - 2.25.2 A completed Financial Information Checklist;
 - 2.25.3 All required supporting documentation, including all financial information listed in the Financial Information Checklist, the Certificate of Incorporation, the applicant body's Memorandum and Articles of Association, and any relevant supporting documentation such as third party agreements.
- 2.26 If you are applying for more than one licence, you must complete and submit a separate application form and financial information checklist for each application, along with any relevant supporting information or documentation.

Application fee

- 2.27 Each application must be accompanied by a non-refundable fee of £2,500, which must be received (Ofcom must be holding cleared funds) by the closing date. We advise applicants to submit their payment in advance of the closing date, whether paying by BACS or CHAPS.

⁵ Word document or RTF files are acceptable. The application form and financial information checklist must be received in an editable format.

- 2.28 Applicants may submit their payment by either of the following methods:
- Payment by BACS into the Ofcom bank account (sort code: 30-97-90; account number: 00782415; account name: Ofcom). Please note that any payments made using this method may take at least three working days to reach the account.
 - Payment by CHAPS into the Ofcom bank account (details as above). Please note that, although this is a 'same day' payment method, applicants intending to submit their payment on the closing date itself should confirm with their bank the deadline for ensuring that we receive payment on that date.
- 2.29 In either case, applicants must put a reference in the transfer consisting of
“LTV [Location the licence is for] [Name of applying entity]”
- This reference, and the account the transfer is coming from, should be specified in section 18 of the application form. We will redact the reference and bank account information before publishing the application form.
- 2.30 The application fee is not refundable under any circumstances.
- 2.31 Payment in cash, by cheque, or by any other means is not accepted.

Contingent applications

- 2.32 The award of each L-DTPS licence must be considered independently, with applications for the licence assessed against the statutory criteria, and judged against other applications for the same licence.
- 2.33 Applicants may apply for more than one L-DTPS licence. Those wishing to apply for more than one licence must submit a separate application form – including a separate application fee – for each licence.
- 2.34 Applications for an L-DTPS licence cannot be contingent upon the outcome of another L-DTPS licence award.
- 2.35 If awarded an L-DTPS licence, the applicant must be prepared to launch the proposed service as a stand-alone business, regardless of whether it might have operated differently were the applicant to hold multiple licences.
- 2.36 If any applicant is already in receipt of an L-DTPS licence award or licence from a previous licensing round, this may be taken into account in the application, particularly as part of the applicant's wider experience and business plan.

The applicant entity

- 2.37 Applications must be made in the name of a single legal entity that is capable of holding a broadcasting licence. This should be a body corporate, and in most cases will be a (registered) company, although it can also include, for example, some bodies created by statute. An individual or a registered charity on its own is not a body corporate.

- 2.38 Where an applicant is a company, its company registration number must be included on the application form. If the application is successful, Ofcom will award and later grant the licence to the body corporate named in the application.

Fit and proper persons

- 2.39 Under the 1990 Act, Ofcom must not grant a licence to any person unless it is satisfied that the person is a 'fit and proper' person to hold it. Ofcom will offer a person whom it is suggested is not fit and/or proper a full opportunity to present his or her case.
- 2.40 The concluding declaration of the application form contains a section that asks you to state whether you consider there to be any fit and proper concerns within the applicant body. If you do not consider there to be any, you should clearly indicate this by stating 'none'.

Prohibited persons

- 2.41 There are no specific prohibitions in the s.244 Order on who can hold an L-DTPS licence.
- 2.42 The prohibitions that generally apply in broadcasting also apply to L-DTPS licensees. The following are disqualified from holding a licence or controlling a licensee:
- 2.42.1 a local authority (other than in specific circumstances);
 - 2.42.2 a political body;
 - 2.42.3 a religious body (except by specific Ofcom determination);
 - 2.42.4 an advertising agency or a company controlled by one.
- 2.43 There are no restrictions on other local media companies holding an L-DTPS licence.⁶
- 2.44 There is also nothing to prohibit consortia from holding an L-DTPS licence as long as the licence can be awarded to a single body corporate.

Independent producers

- 2.45 Independent producers may choose to participate in the process for an L-DTPS licence, and be awarded a licence, without forfeiting their independent status, as set out by The Broadcasting (Local Digital Television Programme Services and Independent Productions) Order 2012.⁷

Control of service

- 2.46 An L-DTPS licence should be held by the entity which legally will be deemed the provider of the service. According to section 262(2) of the 2003 Communications Act, this will be the person 'with general control over which programmes and other

⁶ The Media Ownership (Radio and Cross Media) Order 2011, which removed all local cross-media ownership rules, came into effect on 15 June 2011. See

<http://www.legislation.gov.uk/ukxi/2011/1503/contents/made>.

⁷ http://www.legislation.gov.uk/ukxi/2012/1842/pdfs/ukxi_20121842_en.pdf

services and facilities are comprised in the service (whether or not he has control of the content of individual programmes or of the broadcasting or distribution of the service)⁸.

- 2.47 The capacity on the local multiplex which is reserved for the L-DTPS at each location may not be sublet or assigned by the L-DTPS licensee to another party, or used for anything other than the licensed L-DTPS. However, the L-DTPS may include material produced by third parties (e.g. independently produced or networked content), so long as the L-DTPS licensee retains general control of the broadcast service.

General guidance on completing the application form

- 2.48 This section sets out some general guidance for the completion of the Application Form. More detailed guidance on completing specific sections of the Application Form relating to programming is in Section 3 of this document.
- 2.49 You should aim to keep your answers concise and to the point.
- 2.50 Some sections contain word limits and any information beyond the word limit will generally not be considered.
- 2.51 You should answer every question in the application form.

Supporting documentation

- 2.52 The Application Form and Financial Information Checklist ask you to include with your application a number of supporting documents.
- 2.53 In particular, you should include any financial projections, along with an explanation of the assumptions on which these projections are based. Ofcom has a template for these projections, which sets out the minimum level of financial detail needed. This is available on request from local.tv@ofcom.org.uk, although if you can submit more detailed projections, you should.
- 2.54 You do not have to use this template if you are confident that your own projections provide the information required by section 15 of the application form.
- 2.55 The Financial Information Checklist sets out what documents you should include as supporting evidence for your financial projections. You must include all relevant documents required by this checklist, or provide an explanation for why you are unable to provide them.
- 2.56 Section 5 of the application also requires you to include an illustrative schedule with your application. You will not be held to this schedule if successful.
- 2.57 Where any third party is making a material contribution to the operation and functioning of your proposed service, for example, by regularly contributing to proposed programming or providing access to facilities, you should include evidence of any agreements to do so, such as Heads of Terms or contracts if available.

⁸ Ofcom will normally consider that a person has general control if that person exercises effective control over the selection of programmes that compose the service and their organisation into a programme schedule. See <http://licensing.ofcom.org.uk/binaries/tv/service-provider.pdf>.

- 2.58 Please do not include any generic letters of support or any additional media, such as show reels, as part of your application, as we will not take these into account when assessing your application.
- 2.59 Please do not insert pictures into the Application Form.

Confidentiality

- 2.60 All L-DTPS applications will be published on the Ofcom website. Applicants may request that some parts of an application be submitted in confidence. The sections that may be in confidence are marked on the application form. You should tick the relevant box on the application form if you wish to request that the section be removed from the published copy of the application.
- 2.61 Names of any staff except directors may be redacted, but you must indicate clearly when submitting your application which names you consider to be confidential.
- 2.62 Personal information, such as that contained in the director profiles, will normally be redacted. However, please note that the public contact details, including the name, address, telephone number and email address of the contact, cannot be redacted and will be published on our website.
- 2.63 The Financial Information Checklist and financial projections will not normally be published, nor will any supporting documentation except the indicative schedule, where provided.
- 2.64 We will publish indicative schedules alongside the application forms.
- 2.65 Where an applicant asks us to keep information confidential, we will treat this request seriously and will try to respect it. However, Ofcom may need to publish all applications, including parts that are marked as confidential, for the purposes of carrying out of Ofcom's functions.
- 2.66 If you wish to submit further information in confidence other than where this is specifically indicated as permissible, you must seek confirmation that this is acceptable beforehand, by email, from Ofcom's Local TV Licensing team (local.tv@ofcom.org.uk).

Provision of information

- 2.67 All information provided on the application must be true and correct. If any amendments need to be made by an applicant due to circumstances outside its control, then Ofcom should be informed immediately. No material amendments to the proposals provided in the application may be made by the applicant without the agreement of Ofcom. Ofcom will not agree to any such amendment which it considers would be unfair to any other applicant applying for an L-DTPS licence.
- 2.68 The application form includes a concluding declaration that you must sign confirming that the information in the application and any supporting documents is true and correct on the date signed.
- 2.69 Submission of an application will be taken as evidence of willingness to accept a licence, if offered, on the terms indicated.

- 2.70 Any queries on the L-DTPS licence application process should be directed to local.tv@ofcom.org.uk.

Licensing process

Licence assessment and award

- 2.71 Ofcom will aim to assess and award licences as quickly as practically possible after the closing date for applications. The duration of this period is subject to the volume and complexity of applications.
- 2.72 Ofcom will assess applications based on the proposals presented in the completed Application Form. In the course of assessing applications, Ofcom may seek clarification and/or amplification of the information or proposals set out in an application. We may also require applicants to furnish such additional information in such form or verified in such manner as we may specify. This will be done through correspondence with the contact person named in the application. Applicants should respond to such requests within the time period specified by Ofcom.
- 2.73 Licence awards will be decided by the Broadcast Licensing Committee⁹, which has authority delegated from the main Ofcom Board to award licences.
- 2.74 Application forms and indicative schedules, with any confidential information redacted, will be published on the Ofcom website soon after the closing date.
- 2.75 All decisions by the Broadcast Licensing Committee and the reasons for those decisions will be published on our website as soon after licence award as practically possible.
- 2.76 Successful applicants will be notified in writing of Ofcom's decision to award a licence. It should be noted that a licence award is not authorisation to provide a service. It only sets out Ofcom's decision about which of the applicants should be granted the licence.

Licence start date and duration

- 2.77 Ofcom will prepare a licence for each licence awarded. This will be signed by Ofcom and issued to the licensee shortly before service launch. This is referred to as 'granting'.
- 2.78 At the point of granting, each licence will specify a commencement date and the licence conditions will come into force on this commencement date. This is when the licence term begins.
- 2.79 All successful L-DTPS licence applicants will be expected to launch their service within two years of the date of licence award, unless build-out has not been completed by the local multiplex licensee, or unless Ofcom gives permission for a later launch due to unforeseen circumstances.
- 2.80 In the event that an L-DTPS fails to launch within this timeframe, Ofcom may seek to re-advertise the licence.

⁹ <http://www.ofcom.org.uk/about/how-ofcom-is-run/committees/broadcast-licensing-committee/>

- 2.81 Applicants are asked to propose in their application a realistic launch date within this two-year window. This is an indication of the applicant's preferred timetable and readiness to launch a service. These proposed launch dates will be subject to the local multiplex's technical plan, which will be amended following phase 2 licence awards.
- 2.82 Subject to paragraph 2.79 above, the commencement date in each L-DTPS licence will be the later of:
- 2.82.1 the launch date for the local site, as specified in the Technical Plan as varied by Ofcom; or
 - 2.82.2 the launch date proposed by the L-DTPS applicant after the award of the L-DTPS licence.
- 2.83 Applicants should be aware that an L-DTPS licence requires the service to broadcast, rather than simply allowing it to do so. Therefore, any service that fails to broadcast on the local multiplex, when the local multiplex service is available, while licensed will be in breach of its licence and may be subject to sanctions including licence revocation.
- 2.84 We have awarded the local multiplex licence for the 12 years permitted by the s.244 Order, and all L-DTPS licences will be coterminous with this licence. Therefore, the duration of each L-DTPS licence will depend on when it commences, in relation to the time that the local multiplex licence entered into force.

Promotion of equal opportunities and training

- 2.85 If the licensee (and any other companies within the same group) has more than 20 employees, then Ofcom has an obligation under the 2003 Act to require it to make arrangements to promote equal opportunities and training, and to report annually.

Other licences and EPG prominence

Other licences and platforms

- 2.86 An L-DTPS licence is a licence to broadcast on DTT only, via the local television multiplex. If any licensees should wish to transmit linear services on satellite, cable or the internet, they will need to apply to Ofcom for a Television Content Licensable Service (TLCS) licence.
- 2.87 An application for an L-DTPS licence should describe content provided only via the DTT service. However, if any applicant believes that their business case would be materially different because of the inclusion of any costs and revenues from broadcasting via another platform, this should be included in the business plan, along with an explanation of the assumptions on which this is based.
- 2.88 If any L-DTPS licensee wishes to operate a Video On Demand (VOD) service, they may need to notify the Authority for Television on Demand (ATVOD), which co-regulates these types of service. For more information, refer to ATVOD (www.atvod.co.uk).

EPG prominence

- 2.89 The Code of Practice for Electronic Programme Guides (Addition of a Programme Service) Order 2011 ('s.310 Order') grants L-DTPSs the status of Public Service Broadcast (PSB) channels, and therefore requires that these services are granted 'appropriate prominence' on Electronic Programme Guides ('EPG').
- 2.90 Ofcom has written to the main EPG providers asking for clarity on their proposed policy for listing of local TV services that, when licensed, will be subject to section 310.
- 2.91 The responses received from the main EPG providers have been published alongside the Statement¹⁰ and are summarised in section 2 of that document.
- 2.92 Applicants should base their plans on the assumption that their services will be listed on the basis of the published positions by the relevant EPG providers.

¹⁰ <http://stakeholders.ofcom.org.uk/consultations/local-tv/epg-responses/>

Section 3

General questions and programming

3.1 This section gives more information and detailed guidance on completing the general questions of the Application Form as well as the those relating to the content of the service (sections 1-5). It also sets out the legislative framework for licensing local TV services.

Statutory framework

3.2 Article 3 of the s.244 Order sets out the description of a local digital television programme service. The questions in the application form are intended to ensure that the successful L-DTPS licensees will meet this description.

3.3 Section 18(6) of the 1996 Act provides that Ofcom must, in determining whether and to whom to grant a local digital television programme service licence have regard to the following factors:

3.3.1 the extent to which any proposed service:¹¹

- a) meets, or would meet, the needs of the area or locality where it is received;
- b) would be likely to broaden the range of television programmes available for viewing by persons living or working¹² in that area or locality;
- c) would be likely to increase the number and range of the programmes about that area or locality that are available for such viewing, or to increase the number of programmes made in that area or locality that would be so available; and

3.3.2 the ability of the applicant for the licence to maintain, throughout the period for which the licence would be in force, the proposed service.

3.4 Applicants should have regard to the description of a local digital television programme service set out in article 3 of the s.244 Order including article 3(5) which provides that a service will fall within the description of a local digital television programme service if it includes or would include a range of programmes which:

- 3.4.1 facilitates civic understanding and fair and well-informed debate through coverage of local news and current affairs;
- 3.4.2 reflects the lives and concerns of communities and cultural interests and traditions in that area or locality;

¹¹ A service shall be taken for the purposes of 3.2.1(i) to meet the needs of an area or locality if, and only if:

- (a) its provision brings social or economic benefits to that area or locality, or to different categories of persons living or working in that area or locality; or
- (b) it caters for the tastes, interests and needs of some or all of the different descriptions of persons living or working in the area or locality (including, in particular, tastes, interests and needs that are of special relevance in the light of the descriptions of persons who do so live and work).

¹² References to persons living or working in an area or locality include a reference to persons undergoing education or training in that area or locality.

- 3.4.3 includes content that informs, educates and entertains and is not otherwise available through a digital television programme service which is available across the United Kingdom.
- 3.5 This section primarily relates to the content proposition sections of the application form and includes guidance on drafting Programming Commitments. It also describes the other content requirements for L-DTPS licensees.

Service name (Section 1)

- 3.6 The application form asks you for your proposed service name, as it will appear, for example, in an EPG listing.
- 3.7 When choosing a service name, you must be satisfied that you are able to use the name, or that you have any permission necessary to do so. Ofcom has no role in this.
- 3.8 When assessing your application, Ofcom considers the proposed service name to the extent that it may be relevant to the exercise of our statutory duties.

Proposed area and editorial area (Section 2)

- 3.9 Section 2 of the application form asks you to state the proposed coverage area and proposed editorial area you wish to serve.
- 3.10 The predicted coverage areas are set out in the Coverage Note, and are named in section 1 of this document. It is sufficient simply to state the name of the coverage area given in the Coverage Note.
- 3.11 You may choose to target your editorial content at a sub-set of this coverage area, for example, where that part of the area has a particularly strong and coherent character separate from the rest of the coverage area. There may be more than one coherent editorial area within the DTT coverage area which the service could target.
- 3.12 If you are not planning to target the whole of the coverage area, you should explain in the application form why you have selected a particular sub-set of the coverage area.
- 3.13 Ofcom will assess applications based on plans to serve the editorial area(s) specified.
- 3.14 Where competing applicants propose to serve different editorial areas within a predicted coverage area, Ofcom will consider each application on its merits including, but not limited to, the size of the population in the proposed editorial area and the benefits to those viewers.
- 3.15 Please also indicate in this section whether you intend to locate your main studio/production base within the coverage area, and if not, where you intend to locate it. L-DTPS licensees are required, in usual circumstances, to have the studio from which the service will be broadcast, and/or the main production base, within the licensed coverage area. Should any licensee hold licences for multiple locations, they will be required to have a studio and/or main production base within each of their licensed coverage areas.

- 3.16 Ofcom is open to representations from organisations making the case otherwise and may be prepared to enter into written agreement to exempt L-DTPS licensees from this requirement in the particular circumstances of the case.

Proposed launch date and readiness to launch (Section 3)

- 3.17 Section 3 of the application form asks you to indicate your state of readiness to launch your proposed service, and to give an indicative launch date.
- 3.18 Please give a specific date. We will confirm this launch date with you if you are successful, and when the local multiplex's technical plan has been varied to include your location in its build out timetable.
- 3.19 When indicating your readiness to launch your service, please indicate what is the earliest likely scenario in which you would be able to launch, and what is the latest. If there is a degree of flexibility in your launch plans, please tell us about it in the application.

Programming Commitments (Section 4)

- 3.20 In section 4, you are asked to draft your own Programming Commitments in the table provided. This table will be included in your licence as a set of binding commitments if your application is successful. Your draft Programming Commitments are a very important part of the basis on which applications are assessed, although we will assess applications on the basis of the entire programming proposition in the application. Therefore, you must provide a set of clear commitments for us to assess.
- 3.21 The Programming Commitments are set out in a 250 word summary of the programming output and a table of hours for some specific types of programming. These are for applicants to draft, but Ofcom reserves the right to modify some aspects of any draft commitments, in order, for example, to ensure that they are clear and fit for purpose.
- 3.22 It is important that the Programming Commitments reflect the descriptions of content in the rest of the application form and indicative schedule. The application should demonstrate a coherent service and you should use the questions (5A – H) following the Programming Commitments to expand on your commitments.
- 3.23 The Programming Commitments will be a part of the licence conditions to which you will need to adhere for the duration of the licence if your application is successful. Licensees will be required to report on how they meet these content requirements in their annual return to Ofcom. If it receives a complaint, or on its own initiative, Ofcom may request recordings of the service in order to assess whether the service is compliant with these licence conditions.

Local programming

- 3.24 As set out above, it is a requirement of the L-DTPS licence that the studio from which the service will be broadcast, and/or the main production base, should be within the licensed area (i.e., local). However, not all programming has to be from that studio and/or production base.
- 3.25 While often they may be the same, it is important to note that there is a difference between local *production* (where the programme is made) and local programme *material* (the content of the programme and its relevance to local audiences).

- 3.26 The hours contained within your Programming Commitments table should refer only to content produced for the local service itself (original content), not to, for example, content acquired from another service that is not primarily produced for the local service proposed in your application.
- 3.27 Some applicants may wish to include shared programming in the service. By this we mean programming shared between licensees, for example, made by one licensee and acquired by another for broadcast afterwards, rather than content that is co-produced between licensees.

Programming output

- 3.28 This section refers to the 250 word summary in the Programming Commitments that describes the output of the service.
- 3.29 When you describe your programming output, it is important to be realistic and to make proposals based on your experience and resources.
- 3.30 This section of your Programming Commitments should clearly set out the minimum local commitment you intend to deliver. Please be clear when you are referring to:
- 3.30.1 Locally-produced (i.e. produced in the licensed area);
 - 3.30.2 Local programme material (i.e. content relevant to the licensed area);
 - 3.30.3 Original material (i.e. original to the licensed service).
- 3.31 Ofcom needs to understand clearly how these categories apply and the overlap in your proposed content.
- 3.32 If, for example, you intend to offer a schedule that shares some programming with an existing licensed service, such as another licensed L-DTPS, you should clearly indicate in this section of your commitments the distinction between the local content produced for this coverage area, and the content drawn from another service.
- 3.33 When drafting Programming Commitments, you should:
- Be precise;
 - Be realistic;
 - Include clear descriptions and breakdowns of proposed programme genres and types;
 - Not include examples, for example with regard to scheduling, unless you are willing to be held to them;
 - Not include subjective language or value judgements;
 - Not include qualitative descriptions, such as ‘high-quality’;
 - Not include commitments relating to other services, for example associated VoD services, unless these make a direct contribution to the content of the L-DTPS;
 - Not include marketing/advertising statements or images;

- Not include unnecessary repetition.

3.34 We will assess your proposals in the context of the scale of your proposed operations and the available resources.

Hours of local programming

3.35 This section refers to the section of the Programming Commitments table that asks you to commit to a number of hours of local programming, both first run and repeats, across the day, in peak time and for news and current affairs. Figure 1 below is an illustrative example of how this table is to be completed.

3.36 We have asked for the overall hours of local programming, and the peak time hours, on a weekly basis, but in the section for the hours and scheduling of news and current affairs, you may specify daily amounts of this programming. **Where there is a difference between amounts of weekday and weekend programming, you should clearly state what each will be.**

3.37 We have not set minimum requirements for different types of content, as we understand that there are many different models that can deliver a service that meets the statutory criteria and we do not wish to be prescriptive about what those might be. However, we have said that we would not consider seven hours of news provision per week to be too burdensome for even the smallest licensee. For more detailed information on news, please see 3.43 and 3.72 below.

'First run' programming

3.38 This section gives the definition of what we consider to be 'first run' programming, and this is how we will interpret these sections of your Programming Commitments.

3.39 Proposed schedules with a 'rolling' element may involve some re-use of content 'packages', possibly with an introduction or re-ordering. We consider such 'packages' to consist of material a few minutes in length, measured in 'running times' (that is, excluding advertising breaks, programme trailers and presentation material). An example of such a 'package' may be an on-location news story that is repeated in a number of different bulletins.

3.40 We consider material longer than a package as a stand-alone 'programme'. This would generally be expected to appear on a schedule, and be measured in slot times (including advertising breaks, programme trailers and presentation material during and at the end of programmes).

3.41 The amount of 'first run' material (in the first row of each pair in the Programme Commitments) should include the total length of those programmes even where packages included in the programme have previously been broadcast.

3.42 Where an individual 'programme' is broadcast more than once, only the first showing should be counted as 'first run'. Any subsequent showings should count towards the hours of repeated material (in the second row of each pair in the Programme Commitments). For the avoidance of doubt, both the first showing and repeats still count towards total hours of local programming.

Hours of peak/hours of news and current affairs

3.43 We consider peak time to be the period from 18.00-22.30, every day.

- 3.44 The 'Hours of local programming per week' (i.e. the rows highlighted in yellow in Figure 1 below) are to equal the total number of local programming hours, including any hours that are broadcast in peak (i.e. the rows highlighted in blue).
- 3.45 Similarly, hours of local programming (i.e. yellow) includes any hours of local news and current affairs (described in the rows highlighted in green).
- 3.46 In the illustrative table below, the letters represent numbers to be inserted by you, and the scheduling of current affairs in the green shaded rows is an example (you do not have to describe your scheduling in this way).

Figure 1 – illustrative Programming Commitments hours table

Programming Commitments – rows describing proposed hours (illustrative)			
Hours of local programming per week	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3 onwards</u>
	A hours	B hours	C hours
	D hours	E hours	F hours
First run:			
Repeats:			
Hours of local programming per week in peak-time (18.00-22.30)	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3 onwards</u>
	G hours	H hours	I hours
	J hours	K hours	L hours
First run:			
Repeats:			
Hours per week and scheduling of local news and current affairs programming (e.g. how many bulletins a day and of what duration?)	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3 onwards</u>
	M hours per week	P hours per week	S hours per week
	(N minute news bulletin at breakfast, lunch and evening; O minute current affairs programme weekly)	(Q minute news bulletin at breakfast, lunch and evening; R minute current affairs programme weekly)	(T minute news bulletin at breakfast, lunch and evening; U minute current affairs programme weekly)
First run:			
Repeats:	V minute current affairs programme would be repeated P times	W minute current affairs programme would be repeated P times	X minute current affairs programme would be repeated P times

Programming output (Section 5)

- 3.47 The application form asks you to describe your proposed service and includes a number of questions that you should consider when describing your overall content proposition.
- 3.48 There are also specific questions that relate to the statutory criteria. These are intended to give you the opportunity to fully describe **how** your local programming will meet the statutory criteria against which Ofcom must assess it. It is not sufficient to state that your programming will meet the statutory criteria, you must explain how you think it will do that.
- 3.49 These questions are also intended to allow you to explain how the minimum obligations of your Programming Commitments relate to the rest of the service. Ofcom needs to understand how the various elements of your application, in

particular, the Programming Commitments, any wider programming elements, and your indicative schedule relate to each other.

- 3.50 This section steps through each of the questions 5A-5H, giving more detailed guidance on each aspect of these questions. Please try not to include unnecessary repetition in your answers, and to answer the question asked.

Programme service (Section 5A)

- 3.51 This question asks you to describe your proposed service, which you should illustrate with an indicative schedule for one week. You will not be held to this illustration, only to your Programming Commitments.

- 3.52 Please clearly identify in your illustrative schedule:

3.52.1 Programming that delivers your Programming Commitments; and

3.52.2 Acquired or third party programming.

- 3.53 This schedule does not have to include fully developed programming concepts, e.g. shows with titles and further details such as named presenters. It is sufficient to identify which genres of programming will be scheduled in which hours of the day, across a week.

- 3.54 You must set out clearly in this answer how the hours of local programming and local news and current affairs are apportioned between peak and non-peak times, and between weekdays and weekends, if not already set out in your Programming Commitments.

- 3.55 The following questions may help you describe your programme service (but should only be used as a guide). Where relevant you should also describe how your service will develop over time (e.g. the amount of local programming may increase over time, or new elements may be introduced as resources increase):

3.55.1 What are the proposed programming elements of your service and what will be the balance between the different elements of that programming?

3.55.2 How many hours a day/week of programming do you intend to broadcast in total (for each of the first three years)?

3.55.3 How many hours a day/week of locally-produced programming do you intend to broadcast (for each of the first three years)?

3.55.4 Where this is substantially different from the hours of locally-produced programming (above), how many hours a day/week of local programme material do you intend to broadcast (for each of the first three years)?

3.55.5 Do you intend to broadcast live output? If so, when and how much do you propose to do? How might this level change over time?

3.55.6 Will you broadcast in languages other than English (what languages and how much)?

3.55.7 How much of your output will be original i.e., produced for your service alone?

- 3.55.8 Will all your local programme material be locally produced?
- 3.55.9 How much do you intend to repeat programming?
- 3.56 The guide questions above are intended to help you when answering this question, but it is very important that you demonstrate in this section in particular *how* the service will deliver your Programming Commitments.
- 3.57 In particular, if you intend to regularly broadcast content from another service, for example, another L-DTPS, please explain in this section what the balance of elements between any acquired and local programming will be. There is a further opportunity in section 5 to expand on exactly what you think that programming will be, and in this section it is more important to explain the balance of elements in the service.
- 3.58 You may also wish to expand on how you see your service developing in the first three years in this answer.

Meeting the needs of the area (Section 5B)

- 3.59 For the statutory framework that these questions reflect, please see 3.2 above.
- 3.60 In this section you should try to demonstrate an understanding of some of the needs of the coverage area you are proposing to cover, and explain how your programming is intended to meet those needs.
- 3.61 The statutory description of an L-DTPS breaks down this criterion into two separate elements that are set out in the following two sections. You must demonstrate how your service meets **at least one** of the two following criteria in order to meet the statutory description. You may also explain how your proposed service would meet both of the following criteria, and should consider that in assessing applications in a competitive licence award, Ofcom will take into account the *extent* to which applicants meet the statutory description of an L-DTPS, including where relevant how many of the statutory criteria are met.

Provision of social or economic benefits (Section 5B)

- 3.62 An L-DTPS should bring some social or economic benefits to the area it serves, or to different categories of persons living or working in that area.
- 3.63 You must explain how your proposed service will bring either or both of these benefits to the area, or people within it. It is important that your explanation clearly demonstrates *how your proposed service* will provide these benefits, rather than aspects of your company or operations connected to the service.
- 3.64 When assessing the provision of social or economic benefits Ofcom will take into account your scale and resources.

Catering for tastes, interests and needs (Section 5B)

- 3.65 An L-DTPS should cater for the tastes, interests and needs of some or all of the different descriptions of persons living or working in the area.
- 3.66 Although in many respects this may be the same as 3.59 - 3.61, you should note that this description refers explicitly to catering for the tastes, interests and needs of

people in the coverage area, rather than the coverage area as a location. Therefore, your answer should reflect this emphasis.

3.67 You do not have to explain how your proposed service would cater for the tastes, interests and needs of everyone living or working in a coverage area, as it is acceptable for your service to be targeted at different descriptions of person within the coverage area.

3.68 Please note that the application form does ask you to describe your editorial area in section 3 (see 3.9 above). If you are choosing to target a particular editorial area, then we would expect to see this reflected consistently across the application.

Broadening the number and range of programmes available and increasing the range of programmes made in or about the area (Section 5C)

3.69 You must explain how the programming in your proposed service both broadens the number and range of TV programmes available for viewing in the area **and** increases the range of TV programmes made in or about the area.

3.70 These are two separate requirements of the statutory description of an L-DTPS, and although in many cases proposed programming will meet both of these requirements in the same way, you should be aware that these are two separate characteristics and be sure to reflect this in your answer.

Facilitating civic understanding and debate (Section 5D)

3.71 An L-DTPS must facilitate civic understanding and fair and well-informed debate *through coverage of local news and current affairs*. Therefore this question asks you to explain in more detail your proposed news and current affairs provision. This should reflect and be consistent with what you have included in your Programming Commitments.

3.72 We consider news to be the most important type of local programming and you must propose a reasonable provision of news and current affairs.

3.73 Again, there are no minimum quantity requirements, but with regard to news, we are unlikely to consider less than seven hours in total per week of broadcast news to be too burdensome for even the smallest L-DTPS licensee.

3.74 **This does not mean** that we expect L-DTPS licensees to produce an hour of continuous original news content per day. For example, a fifteen minute news bulletin, repeated four times in a day, provided it is updated, would count as an hour of broadcast news.

3.75 You may propose news content on the basis of hours per week rather than hours per day.

3.76 We have published guidance and definitions for news and current affairs, which is included in the *Statement* and reproduced below in full.

3.77 The guidance is as follows:

News: As the licence is for a local television service, the most important element of news provision should be local news. Local news should be high-quality, relevant, timely and accurate, as well as complying fully with

the requirements of the Broadcasting Code, including due impartiality. A station should be able to react on-air to major local events in a timely manner. Bulletins should seek to reflect the interests and concerns of those living in the area. Local news stories should be up-to-date and regularly refreshed. Simply localising UK-wide news (e.g., by conducting vox pop interviews or inserting local place names into UK-wide stories) without local news/information generation would not be regarded as a valid approach to fulfilling local news requirements. Local news can contain local sports stories but these should not be the main component of news. Similarly, entertainment news or 'softer' local content such as 'what's-on' may be relevant locally but should not be the main ingredient of bulletins or replace local journalism.

Current affairs: A current affairs programme is one that contains explanation and/or analysis of current events and issues, including but not limited to material dealing with political or industrial controversy or with current public policy. Current affairs content is also required to be duly impartial.

3.78 The purpose of this guidance is to ensure that news is journalism-led and that 'softer' types of news – including sports and entertainment news – do not drive a licensee's approach. This does not mean that sport and entertainment cannot form part of news content, but these and other 'softer' types of local news, such as 'what's on' listings, should not regularly or usually be the primary component of news programming. Likewise, it may sometimes be perfectly acceptable to localise national news stories to the benefit of the local audience, but this should not be a substitute for local reporting.

3.79 Both news and current affairs content must be duly impartial.

Reflecting the lives and concerns of communities and cultural interests and traditions (Section 5E)

3.80 An L-DTPS must reflect the lives and concerns of communities and cultural interests and traditions in the coverage area and your answer to this question must demonstrate how and what elements of your programming will achieve this.

Informing, educating and entertaining, and not otherwise available (Section 5F)

3.81 This question reflects the public service nature of L-DTPS licences, and in your answer you should explain how and what elements of this programming will deliver this broad public service remit.

3.82 An L-DTPS must also include content that is not otherwise available through a digital television programme service which is available across the UK. This means that each service must include some content that is original to the service, and cannot simply consist entirely of acquired or shared content.

Non-local programming (Section 5G)

3.83 This section asks you to expand on any programming that is either not locally-produced, or not local programme material. This is so that Ofcom can understand more fully the balance of elements within the service.

3.84 We recognise that it may not be possible for all applicants to detail their proposals for content sourced from third parties, given some of these arrangements, for example,

for sharing networked content, can only be made once other L-DTPS licences are awarded. However, you should state any intentions in this regard and, if possible, you should indicate from whom you intend to source this content.

- 3.85 Additionally, it is important for us to understand any implications for the business plan that follow from non-local programming. Non-local programming could represent a cost (e.g. bought-in content) or a revenue stream (e.g. teleshopping) for the local service.

Development of service (Section 5H)

- 3.86 We recognise that local TV is an emerging sector and that it may be difficult to set out an accurate content proposition for the entire duration of the licence. Therefore some of the questions in the application form refer specifically to the first three years of programming output, and where relevant you should describe how the service will develop over time.
- 3.87 However, as licences are awarded for up to 12 years, the application form also asks you to consider how you envisage your service developing after the first three years. This is because we recognise that initially the business plans of some services may need more scope to develop the service in line with developing resources, and to give you the opportunity to tell us how you think your service will develop over the course of the licence.
- 3.88 You do not need to address the development of the service in the first three years in your answer to this question, as the preceding questions address this time period.
- 3.89 If you are content that your proposed commitments for the first three years are deliverable from the time of service launch then you should not feel obliged to propose significant developments to the service outside of this initial time period.
- 3.90 Successful applicants must deliver their Programming Commitments once licensed, but they may exceed these commitments if they consider that they are able to do so.

Compliance (Section 6)

- 3.91 You should provide details of the procedures you will put in place to ensure that the service as broadcast is compliant with the Broadcasting Code, all other relevant codes (as may be revised by Ofcom from time to time) set out in this section and the L-DTPS licence conditions . This should be a brief outline of the proposed procedures, and will not be included in the licence conditions.
- 3.92 This is so that Ofcom can be satisfied that applicants have understood the particular requirements that apply to television broadcasting.
- 3.93 You may find the following section on content requirements helpful when considering what compliance procedures you will put in place if your application is successful.

Content requirements

- 3.94 This section describes other content requirements that will be placed on L-DTPS licensees and which you may find helpful when considering what you wish to include in your proposed service. This is set out under three headings:

3.94.1 The Broadcasting Code;

- 3.94.2 Advertising and sponsorship;
- 3.94.3 Other content requirements that apply to L-DTPS licences.

The Broadcasting Code

- 3.95 All L-DTPS licensees must comply with Ofcom Broadcasting Code (the 'Broadcasting Code'), and should ensure that their content proposition complies with this code.
- 3.96 Ofcom issues accompanying guidance to the Broadcasting Code. This is for guidance only, and applicants should take their own legal advice regarding specific instances of compliance with the Broadcasting Code.
- 3.97 Licensees should access a full copy of the Broadcasting Code via the Ofcom website <http://www.ofcom.org.uk/tv/ifi/codes/bcode/>. It is set out in sections covering the following areas:
 - 3.97.1 Protecting the under-eighteens;
 - 3.97.2 Harm and offence;
 - 3.97.3 Crime;
 - 3.97.4 Religion
 - 3.97.5 Due impartiality;
 - 3.97.6 Elections and referenda;
 - 3.97.7 Fairness;¹³
 - 3.97.8 Privacy; and
 - 3.97.9 Commercial references in TV programmes.
- 3.98 When preparing their business plans, applicants for L-DTPS licences should consider what arrangements they will need in order to make sure that all their output is compliant with the Broadcasting Code.

Advertising and sponsorship

- 3.99 All L-DTPS licensees are subject to Ofcom's Code on the Scheduling of Television Advertising ('COSTA'), which can be found here: <http://stakeholders.ofcom.org.uk/binaries/broadcast/other-codes/tacode.pdf>.
- 3.100 Advertising content is co-regulated by the Advertising Standards Authority (ASA). Rules on the content and scheduling of advertising are in the Broadcasting Committee of Advertising Practice's Code (the 'BCAP Code'), which can be found here: <http://www.cap.org.uk/The-Codes/BCAP-Code.aspx>.

¹³ This section is referred to as the 'Fairness Code' in the L-DTPS licence and definitions.

Advertising minutage

- 3.101 Consistent with Article 26 of the AVMS Directive, all L-DTPSs that are not receivable outside the UK are exempt from the advertising minutage restrictions set out in COSTA. However, if a service is receivable outside the UK, for example, because its coverage overflows into another EU member state, it will not benefit from this exemption.
- 3.102 Applicants considering whether to broadcast on other platforms in addition to DTT, such as satellite, should note that the service that is entitled to appropriate prominence on the EPG is the L-DTPS and *simulcasts* of that service. Ofcom's guidance on simulcasting can be found on our website.¹⁴

Other content requirements

Prohibited content

- 3.103 The s.244 Order specifically prohibits L-DTPSs from carrying two types of content. These are:
- 3.103.1 pornographic material;¹⁵ and
 - 3.103.2 advertisements of a duration of at least three minutes *and* for a chat service made available for purchase by means of a premium rate service.¹⁶

Free-to-air

- 3.104 You should also be aware that the s.244 Order requires that L-DTPSs be provided without charge to any persons in the UK, i.e., free-to-air, not pay-per-view. Licensees or connected parties may not enter into any contractual or technical arrangements that would require UK viewers to pay to receive their services on DTT.

Party Political Broadcasts (PPBs) and Party Election Broadcasts (PEBs)

- 3.105 The statutory framework requires L-DTPS licensees to carry Party Political Broadcasts and referendum campaign broadcasts (PPBs). During 2012, Ofcom consulted on revisions to the Ofcom rules on Party Political and Referendum Broadcasts. Ofcom's statement on revisions to these rules applying to L-DTPSs can be found on our website.¹⁷
- 3.106 The application form invites you to consider proposals to facilitate 'civic understanding and fair and well-informed debate through coverage of local news and current affairs'. Like all content, this must comply with the Broadcasting Code, including a requirement for due impartiality.

¹⁴ <http://licensing.ofcom.org.uk/binaries/tv/licensing-position.pdf>

¹⁵ S.19A of the 1996 Act.

¹⁶ S.19B of the 1996 Act.

¹⁷ http://stakeholders.ofcom.org.uk/consultations/party-political-referendum-rules/statement/?utm_source=updates&utm_medium=email&utm_campaign=party-political-broadcasts-statement

Access service requirements

- 3.107 Ofcom's Code on Television Access Services¹⁸ applies to all broadcasters, but television services achieving an average audience share of all UK households over a 12 month period of 0.05% or less are excluded from providing television access services. We anticipate that many, if not all, L-DTPS licensees will be exempt under this rule as a result of their audience share.
- 3.108 Although not a regulatory requirement or a criterion for licence award, we welcome any content propositions that do include provision of access services.

Retention of recordings

- 3.109 All licensed television broadcasters are required to retain recordings of their output under the 1990 Act. L-DTPS licensees must keep recordings for 60 days.
- 3.110 This requirement applies to all broadcast output.

Independent production quotas

- 3.111 L-DTPS licensees do not have to comply with the 10% independent production quota that applies to other digital programme service licensees. This obligation was removed in 2012 by The Broadcasting (Local Digital Television Programme Services and Independent Productions) (Amendment) Order 2012.¹⁹
- 3.112 The AVMS Directive also includes quotas on European works and European independent works, but allows the UK (like any other EU member state) to exempt local TV channels that do not form part of a national network from these obligations. This exemption applies to L-DTPSs.

¹⁸ This is referred to as the 'Code on Subtitling, Signing and Audio Description' in the L-DTPS licence and definitions.

¹⁹ <http://www.legislation.gov.uk/ukxi/2012/1842/contents/made>

Section 4

Ability to maintain service

- 4.1 When assessing L-DTPS licence applications, Ofcom must have regard to the ability of the applicant to maintain the proposed service for the duration of the licence. This is one of the statutory criteria for licence award.²⁰
- 4.2 This section sets out information that you should include in your application, and for you to consider when putting together your business plan. It also describes some of the things Ofcom expects to be shown in the business plan section of the L-DTPS licence application.
- 4.3 We recognise that there will be a range of business models within this sector, and so the description of our expectation is not exhaustive. There may be some very different ways to run a local TV service.

About your organisation

Company details (Section 7)

- 4.4 You must provide the details of the applicant company requested in this section as they are listed on Companies House.
- 4.5 We only accept applications from bodies corporate. A body corporate is almost always a (registered) company, although it can also include, for example, some bodies created by statute (an individual or a registered charity on its own is not a body corporate). If the applicant entity is not a company, you must explain how it meets the description of a body corporate. For more information on eligibility and the applicant entity see 2.34 - 2.67.
- 4.6 Your application must therefore be submitted on behalf of a registered company (or other body corporate). There are different types of company (e.g. a company limited by shares, a community interest company, a company limited by guarantee) and we need to know what kind of company is applying for a licence.
- 4.7 We will not consider a licence award to a company if it has not yet been registered. If the application is successful the licence will be awarded to the body corporate (e.g. company) submitting this application.
- 4.8 With your application you should include a copy of the company's certificate of incorporation, and a copy of the Memorandum and Articles of Association.

Ownership (Section 8)

- 4.9 Ofcom needs to know about the ownership of the applicant company (or other body corporate), and any issues regarding its control. You should provide information on who owns and controls the company, and on what basis this ownership and control is achieved.
- 4.10 In relation to exerting control over the applicant, the information provided should include the name and address of any individuals or corporate bodies in accordance

²⁰ S.18 (6)(b) of the 1996 Act.

with whose wishes the applicant's affairs are or will be conducted in most cases or in significant respects.

- 4.11 You should also include details of all subscribers, members, shareholders, or any other class of persons relevant to the company, the extent of their interest (such as % shareholding) and the date they acquired that interest.
- 4.12 If you intend to change the balance of interests within the company, for example, if you intend to issue more shares to other individuals, please clearly distinguish between the current position of the company and the future position. Please also indicate the likely date on which these changes will be implemented.

Management and operations

- 4.13 This section provides more detail on the sections relating to the management and operations of the service (sections 9 – 14 of the application form). The proposed management and operational setup of a station is an important consideration for Ofcom when assessing your ability to maintain your proposed service, and you should provide as much information as possible.

Management structure (Section 9)

- 4.14 In addition to the notes above on ownership, Ofcom is also required to evaluate the human resources involved in the running of a service. Your answer should demonstrate how those who have relevant experience will work for the service.
- 4.15 Please provide an outline of the proposed management structure of the service. You should clearly identify who has executive responsibility for the operation of the station, and explain the reporting lines within the management.
- 4.16 For directors, please also be clear who has executive responsibility in the running of company. It may be appropriate to indicate the likely time commitment of individuals if known. For any non-executive roles, please indicate clearly the proposed responsibilities and reporting structure within the applicant company.
- 4.17 You should also explain what relationship the proposed management has to any other company or existing business, for example, a parent company.
- 4.18 If your proposed structure includes any management groups such as boards or committees, you should explain their roles and remits, as well as how they fit within the reporting structure you have proposed.
- 4.19 In this section, and in section 11 regarding the staffing structure, names of staff members other than directors can be redacted. Please indicate clearly when submitting your application which names you wish Ofcom to redact from the published version.

Director profiles (Section 10)

- 4.20 You must complete a separate table for each director. If there are any proposed directors (i.e. not yet registered on Companies House), you should also complete a separate table for each of these, clearly indicating that they are proposed directors and when you anticipate that they will be appointed.

- 4.21 Some or all of the information, except the names of individuals, in these tables will usually be redacted from the published version of the application. The names of directors cannot be redacted.
- 4.22 Please answer every question in this section. When assessing your application Ofcom needs to understand fully who will have executive responsibility for the service, and what their particular responsibilities will be.

Staffing structure (Section 11)

- 4.23 You should provide an explanation of your proposed staffing structure, indicating job titles and post holders (where known) for key positions. Please be clear in your answer as to who you intend to run the proposed service and what their relationship is, if any, to any parent or existing company.
- 4.24 If your organisation is large it may not be necessary to list everyone, as the key roles and an indication of size may be sufficient. However, for a small organisation it may be appropriate to list everyone.
- 4.25 Regardless of the size of your organisation, you should include the total number of staff and the number falling within different categories (for example, sales, management, editorial, etc).
- 4.26 Please also indicate unpaid staff as well as paid staff, if relevant.
- 4.27 You may provide an organisational chart with this answer, if you wish. You may also request that names of staff excluding directors be redacted from the published version of your application. If you wish any names to be redacted, please make this clear when submitting your application.

Applicant's experience (Section 12)

- 4.28 Ofcom asks for a brief history of your group and the experience of relevant individuals within it in order to help us assess your ability to maintain your proposed service. This is an opportunity for you to demonstrate your experience in a range of areas, as we understand that a variety of experience may be relevant to the operation of a business.

Group history (12A)

- 4.29 In this section please provide a brief history of your group, including how and when it came to be formed.

Group broadcasting experience (Section 12B)

- 4.30 Please tell us if your group as a whole has prior experience of broadcasting, for example from holding another type of broadcast licence. This does not have to be limited to television broadcasting, but can include radio as well.

Non-broadcast experience (Section 12C)

- 4.31 Ofcom appreciates that the group or individuals within it may have experience of non-broadcast sectors that may be relevant to operating a local TV service, such as journalism, the third sector, local business, sales and advertising or fundraising.

Please detail any experience that you think is relevant to the operation of your proposed service.

- 4.32 Please also explain what role you anticipate these individuals will play in the service, for example, editorially, as part of the management, as an advisor, etc.

Broadcasting experience of individuals (Section 12D)

- 4.33 Please include in this section the broadcasting experience of any key individuals within your group whose experience has not been explained in section 12B. There may be individuals within your group who were not involved in any collective previous broadcasting experience, or have further experience in addition.
- 4.34 Please also explain what role you anticipate these individuals will play in the service, for example, editorially, as part of the management, as an advisor, etc.

Third party involvement (Section 12E and 12F)

- 4.35 In section 12E please explain if there are any third parties involved in your application who are not formally part of your group. This could include consultants or advisors who are not making a significant contribution to the ongoing operation of the service but have agreed to be part of the application. Please include a letter from each individual or organisation setting out their role in the application and their proposed role in the service.
- 4.36 In section 12F, please detail any significant third party agreements or partnerships, such as an ongoing agreement to provide or contribute to content, or to provide facilities to the service, that you have included anywhere in your application. You should provide heads of terms if possible, but if not, please make sure you detail the proposed terms of the agreement, as well as the stage any discussions have reached. Please do not include general letters of support.

Risk (Section 13)

- 4.37 In this section you should include an analysis of the main risks to your proposed business plan, and detail how you propose to address these. It is important for Ofcom to understand your analysis of the main risks to your business when considering whether your proposals are realistic given your resources.
- 4.38 You should consider any financial or operational risks in your answer, as well as the particular coverage area for which you are applying.

Character of service (Section 14)

- 4.39 L-DTPS licensees are also required to maintain the character of the service. You must explain in detail how the character of the service, as proposed in the application, is to be maintained for the period for which the licence would be in force.²¹ This will be assessed primarily from the business plan.
- 4.40 As with the Programming Commitments, we encourage you to propose realistic business plans that can sustain their proposed service and its character.
- 4.41 This section is, in effect, a non-confidential summary of your business plan.

²¹ S. 18 (2)(d) of the 1996 Act.

Business plan (Section 15)

- 4.42 Alongside this section of the application form, you must also complete a financial checklist, and make sure you submit all the supporting documentation listed in that checklist.

Funding

- 4.43 Applicants need to submit information regarding their present and projected financial position during the period for which the licence would be in force. More specifically, where the applicant is an existing company, or a subsidiary of an existing company, the applicant should provide its and/or its ultimate parent's last three years' statutory accounts and current year's management accounts.
- 4.44 Ofcom needs to be assured that the applicant has access to adequate initial funding to establish the proposed service. Ofcom therefore requires applicants to provide full details of the type, sources and amount of funding or proposed funding to be used to fund the licence, including any material terms and conditions (as set out in 15A) attached to such funding.
- 4.45 If the availability of funding is dependent upon any condition(s), applicants must explain what these conditions are, to which part of the funding they relate and how the applicant will fulfil these conditions and when these conditions must be met by. Applicants may also include details of any in-kind support they have or may receive and detail any conditions attached to any such in-kind support.

Financial projections

- 4.46 Ofcom will also need to be assured that the applicant has made a realistic estimate of the revenues and costs associated with providing the service, in order to ensure that the service is capable of delivering its Programming Commitments. Applicants are therefore required to submit their financial projections, which must include as a minimum profit and loss accounts and cash-flow forecasts.
- 4.47 As a minimum, we require sufficient revenue and cost information to enable Ofcom to understand what revenues you expect the proposed service to be able to generate and what the expected costs of providing the service are. It is therefore important that applicants state all of their assumptions underpinning their financial projections and provide sufficient detail to support these assumptions.
- 4.48 When assessing the business plans, Ofcom will assume that any projections are based on the estimated population figures provided by the DPSA for your area in the Coverage Note. If you have based your projections on a different audience measure, you must explain what your expected audience reach and figures are, and how you have arrived at these assumptions.
- 4.49 Financial projections should be submitted as an excel spreadsheet. We expect most respondents will already have prepared financial projections for their own purposes. However, should an applicant need guidance in preparing their financial projections, an excel template can be requested from Ofcom by emailing local.tv@ofcom.org.uk.
- 4.50 The Ofcom template for financial projections is designed to ensure that Ofcom has the minimum level of information necessary to make a decision on licence award. Applicants who are sufficiently confident in their own, fuller, projections, should supply those instead of using this template. If you are in doubt about whether you

should use this template for financial projections, then we recommend that you request it.

- 4.51 As set out above, in the course of assessing applications, we may seek clarification and/or amplification of the information or proposals in any application and require any applicant to furnish such additional information in such form or verified in such manner as we may specify. This can include the financial information submitted.

Revenue and costs outline

- 4.52 Ofcom needs to understand what the projected sources of revenue are and how this revenue stream will be achieved. This is to ensure that Ofcom is satisfied that the proposed business plan is achievable.
- 4.53 For example, where an applicant's financial projections include advertising or other revenues, applicants must provide details about the way in which this revenue is to be generated (e.g. who they expect the main advertisers will be and how the applicant plans to sell advertising).
- 4.54 In the event that there is a shortfall in the applicant's proposed funding and/or revenues, the applicant should provide details of what cost cutting might be achievable whilst still enabling the applicant to deliver their proposed service.
- 4.55 Ofcom has set out a number of questions, in the application form, which may assist you in providing this information, however if these questions are not applicable, you should explain what revenue sources you are expecting and provide details on how this will be generated.

BBC content funding (Section 15B)

- 4.56 The BBC has committed to providing up to £15 million of content funding to L-DTPSs, between the start of licences and the end of the current Charter period. The BBC has indicated that this is until the end of March 2017. This money will be provided from the BBC's television licence fee income.
- 4.57 This funding is not regulated by Ofcom, nor does Ofcom have any responsibility for it.
- 4.58 All L-DTPS licensees are eligible for this funding, and the BBC has published a set of high-level principles about how it intends to disburse this funding by buying news stories from L-DTPS services. This document is available here: <http://www.bbc.co.uk/aboutthebbc/insidethebbc/howwework/reports/localtv.html>.
- 4.59 This funding is only available for items suitable for inclusion in the BBC's regional and national news programming and services, and is weighted towards the first year of operation for each L-DTPS. This is in order to provide more guaranteed funding in the start-up period when it is most needed.
- 4.60 Subject to meeting minimum quality requirements, the BBC's proposal is to buy around 85 stories per month for £150,000 in the first year of operation; around 35 stories per month for £60,000 in the second year of operation; 10-15 stories per month for £20,000 in the third year of operation.²² This is not the limit of the content funding, and so services may be able to provide more content than these monthly

²² These figures have been amended in line with the BBC's published amendments to the proposals for disbursing content funding (July 2012).

figures in order to acquire more funding. More detail is available in the BBC funding document, and this Invitation to Apply should not be taken as confirming that any L-DTPS licensee will receive any funding.

- 4.61 You should include any such BBC funding in you business plan if you intend to rely on it, and you should also explain the extent of your reliance in section 15B of the application form. You should also be able to demonstrate how you will replace the BBC content funding as a revenue stream as it decreases over the first three years, and once it has been exhausted after the end of March 2017.

Section 5

Relationship with local multiplex licensee

- 5.1 This section sets out some further information regarding the relationship between any successful L-DTPS licence applicants and the local multiplex licensee (Comux UK), that you may wish to consider when applying for an L-DTPS licence.

Multiplex capacity for L-DTPSs

- 5.2 Each L-DTPS licensee is entitled to sufficient capacity on the local multiplex for a single standard definition service and any ancillary services required for that service.²³ Ancillary services include services such as access services and EPG data, but **do not** include HD services or time-shifted services. Any L-DTPS licensee that wished to provide services such as these may need to hold a separate licence to do so, and would need to purchase sufficient multiplex capacity as may be commercially available.

Transmission costs

- 5.3 The statutory framework sets out that the local multiplex provider is not able to charge L-DTPS licensees a carriage cost that exceeds the cost to the local multiplex provider of providing that facility. This is defined in the s.244 Order as ‘net operating costs’, which are ‘operating costs reasonably incurred by the [multiplex] licence holder for the broadcast of that service, so far as these costs are not met by funding made available to the [multiplex] licence holder by the BBC’.
- 5.4 The BBC Trust is providing up to £25 million to the local multiplex operator to cover the capital costs of build-out.²⁴ This funding is not regulated by Ofcom, nor does Ofcom have any responsibility for it.
- 5.5 Arqiva has published Reference Offers which provide an indication of the price that Arqiva would charge for transmitting the local TV multiplex service. These Reference Offers were aimed at potential multiplex applicants, but as they specify the operating cost at each of the 44 sites, they also give a guide to potential L-DTPS licence applicants of the likely costs of transmission for each site. Applicants should be aware that these may not reflect all current prices for these services.
- 5.6 The Reference Offers can be found here: <http://stakeholders.ofcom.org.uk/consultations/local-tv/arqiva-offer>. Ofcom has also published some guidance to accompany the Reference Offers, published on our website: http://licensing.ofcom.org.uk/binaries/tv/local-tv/Reference_Offer_Guidance.pdf.
- 5.7 The local multiplex licensee, Comux UK, is able to provide applicants with a breakdown of the likely costs of transmission and a range of other services for their respective locations. Applicants should contact Comux directly to discuss these – contact details are available on our website.²⁵ When setting out the assumptions on which their business plans are based, applicants must state clearly the source of their transmission cost data.

²³ For a definition of ‘ancillary services’ please see Section 24(2) of The Broadcasting Act 1996.

²⁴ http://www.bbc.co.uk/bbctrust/our_work/other/local_tv_contribution.shtml

²⁵ <http://licensing.ofcom.org.uk/tv-broadcast-licences/current-licensees/multiplex/Multiplex-L/>

- 5.8 This is not a guarantee of the price that will be charged by the local multiplex operator, nor of the price that would be determined by Ofcom, if required, in the event of a dispute.
- 5.9 The local multiplex licensee, Comux UK, has indicated that it intends to make commercial use of the spare multiplex capacity at each site. If it does, then it would be reasonable for L-DTPS licence applicants to assume that they will pay approximately one third of the local operating costs in the Reference Offer.
- 5.10 Therefore our approach to this cost in our assessment of L-DTPS licence applicants' business plans will be that applicants should plan to cover approximately one third of the local operating costs in the Reference Offer. However, we will also expect applicants' business plans to take into account the possibility that this cost could be higher if the local multiplex operator is unable to make commercial use of the extra capacity, and display some contingency for this eventuality.
- 5.11 We assume that carriage cost does not include the cost of the delivery of signal to the transmission site. This is the responsibility of the L-DTPS licensee.
- 5.12 For more information on transmission costs, and any disputes regarding them, please see the Statement.²⁶

Requirement to co-operate

- 5.13 The statutory framework includes a requirement that the L-DTPS licensees and the local multiplex licensee co-operate with each other to facilitate the provision of local TV.
- 5.14 The local multiplex is required to broadcast the L-DTPS and the L-DTPS licensee is required to provide the service to the local multiplex licensee. It is in the interests of both parties to co-operate.
- 5.15 L-DTPS licensees are also required under the s.244 Order to take steps to participate in the formation of a legal entity and in co-operation with that entity to seek to measure the number of viewers of the service. They must also encourage that legal entity to apply for a local multiplex licence, or to negotiate for a local multiplex licence, which becomes available. This will be a licence condition.
- 5.16 The successful applicants for the initial 19 L-DTPS licences are at the time of publishing this document in the process of incorporating a legal entity, and assuming that this entity is sufficient to meet the requirements of the statutory framework, any further phase 2 licensees will have an obligation to become part to this legal entity.

Technical requirements

- 5.17 Each L-DTPS licensee is required to make the L-DTPS available to be broadcast on the local multiplex at all times, and in the technical format agreed with the local multiplex licensee. Technical formats will be agreed after licence awards have been completed.
- 5.18 The assumed interface point is at the relevant transmitter site and delivery to that point is the responsibility of the L-DTPS licensee. L-DTPS licensees can agree alternative arrangements with the local multiplex licensee after licence award.

²⁶ <http://stakeholders.ofcom.org.uk/binaries/consultations/localtv/statement/local-tv-statement.pdf>

Extension of coverage

- 5.19 Post licence award, both the local multiplex and L-DTPS licensees are able to request an extension of coverage, or coverage of a new location, not included in the original technical plan, providing this is technically possible.

At L-DTPS licensee's request

- 5.20 Where an L-DTPS licensee requests that coverage is extended, whether that is by extending coverage from an existing site, or by building supplementary relay transmitters, the local multiplex licensee is required to facilitate this provided the L-DTPS licensee covers the cost of the extension.
- 5.21 If agreement is reached between the parties, Ofcom may consent to the change by means of a variation to the Licence. Ofcom will take into account the impact on the local multiplex operator when considering requests for extension of coverage.

At local multiplex licensee's request

- 5.22 The local multiplex licensee may also request extension of coverage.
- 5.23 We would not expect the local multiplex licensee to build out to a location where there was no L-DTPS operator, as the local multiplex licensee is only required to build out to locations where there is an appropriately-licensed L-DTPS operator. Our view is that there is no point in building out a service for it to remain unused.
- 5.24 Should the local multiplex provider seek to increase its coverage through transmitter enhancements that would result in a potential increase in the cost to the L-DTPS licensee, then the increase in cost should only be passed on to the L-DTPS licensee if the increase in coverage is of benefit to that licensee. For example, increasing coverage in a location where there is no natural affiliation to the local service's core target editorial area may not be of any benefit to the L-DTPS licensee.
- 5.25 Ofcom will take into account the impact on any L-DTPS licensee affected by this extension, and they will have the opportunity to make representations to Ofcom concerning this request. However, this approach does not allow L-DTPS licensees an effective veto over any coverage extension requested by the local multiplex operator.
- 5.26 As our indicative coverage planning is a minimum coverage requirement for the local multiplex operator, we will be unlikely to license an L-DTPS licence applicant who thinks this coverage area is too great. By the same token, we are unlikely to accept requests for reduction in coverage post licence award.

Section 6

Other information for applicants

Licence fees

- 6.1 Annual L-DTPS licence fees are calculated as a percentage of the relevant turnover of the licensee. These are set out in Table 1 below.
- 6.2 There is a minimum annual fee of £1,000.

Table 1: Category A PSB Fees 2013/14

Relevant Turnover		% of revenue payable as annual fee
£0m	- £10m	0.12420%
£10m	- £35m	0.18630%
£35m	- £75m	0.27945%
£75m	- £300m	0.41917%
Over	£300m	0.0%

Licence transfer/variation

- 6.3 There is a fee of £1,000 for any L-DTPS licence transfer or variation.
- 6.4 A licence award is not transferable. A licence can only be transferred once it has been granted and has come into force.
- 6.5 A licence can only be transferred from one body to another with the prior written consent of Ofcom. The legislation stipulates that such consent shall not be given unless Ofcom is satisfied that the party to whom it is proposed to transfer the licence would be in a position to comply with all of the licence conditions throughout the remainder of the licence period. A licence transfer request can only be considered from the current holder of the licence. The party to whom it is proposed to transfer the licence will be asked to provide information about the body corporate that will hold the licence, evidence of funds available to the new licence-holder to sustain the service going forward, and other information as deemed appropriate at the time of the request.
- 6.6 However, if the body corporate were to change ownership, for example, if all of the shares in a company were sold to another company, but the original body corporate remained and was still the named licensee, then Ofcom must be notified of the change in ownership but does not have to give permission for the change in ownership.
- 6.7 Ofcom reserves the right to revoke a licence after it has been awarded or granted if changes take place which affect the nature or characteristics of the licensee, or in the persons having control over or interest in the licence, such that they would have affected Ofcom's decision to award the licence had the changes occurred before the award. This does not mean that all changes in the ownership of a licensee are necessarily problematic. If there are changes to your licensee, you are advised to seek advice from the Local TV Licensing team at Ofcom as soon as possible (see

paragraph 1.5 for contact details). Prompt notification to Ofcom of any change in control will be required.

Annual return

- 6.8 L-DTPS licensees must complete a short, factual, annual return. This is so that Ofcom can report on this emerging sector, and to minimise the compliance work Ofcom will have to do, along with its attendant burdens on licensees. We also collect information on licensees’ relevant turnover in order to calculate annual fees.
- 6.9 The first annual return will only need to be completed once the service has been broadcasting for a full year.
- 6.10 Ofcom will confirm the format and process for submitting annual returns once the first licences have been awarded. We do not intend this to be an onerous burden on local services.
- 6.11 For the scope of the annual return, see Table 2 below.

Table 2: Scope of annual return

Average daily hours of transmission: - Weekdays - Weekends
Average daily hours of editorial programming (by slot time): - Weekdays - Weekends
Average daily hours of teleshopping and long form advertising content (by slot time)
Average hourly advertising minutage in: - peak (6pm to 11pm) - off-peak (11pm to 6pm)
Average daily hours (and spending) of local programming (by slot time): - first run originations - first-run acquisitions - repeats (broken down into originations and acquisitions)
Proportion of first-run hours/spend on programmes that are produced within licensed area
Average number of live hours (and spend) per week (by slot time) (and % that are news)
Average hours (and spend) of news programming per week (by slot time)
Average hours (and spend) of current affairs per week (by slot time) – first-runs and repeats
Licence commitments, and performance against them: - licence commitment 1 - licence commitment 2 - licence commitment 3
Description of type and amount of local programming not comprised within news and current affairs

Sanctions

- 6.12 Ofcom is empowered to apply specific penalties in respect of breaches of licence conditions. This includes breaches of programming commitments and requirements set out in the codes which the licensee is required by the licence to comply with. These sanctions include the power to direct a licensee to broadcast a statement of findings, impose financial penalties, shorten the licence period, suspend the licence, or revoke the licence.

- 6.13 The imposition of a statutory sanction against a broadcaster is a serious matter. Ofcom may, following due process, impose a statutory sanction if, for example, it believes that a licensee has repeatedly, deliberately, or seriously breached the terms of its licence conditions, or Ofcom's Codes (though our powers are not limited to those cases and we may exercise them in others). Where a licensee is found to be in breach, the degree to which any penalty is applied must be appropriate and proportionate to the contravention in respect of which it is imposed. In addition, Ofcom must have regard to any representations made to them by or on behalf of the regulated licensee concerned.

Annex 1

Document history

Version	Date	Details
1.0	24 September 2013	Document published