



Notice of Invitation to Apply for
DTT Multiplex B capacity
Statutory Notice

Date: 2 July 2008

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Section 1

Introduction

Background

- 1.1 On 3 April 2008, Ofcom published its statement¹ entitled “Digital Television: Enabling New Services – Facilitating efficiency on DTT”. That statement concluded Ofcom’s consultation process², which was initiated in November 2007 in response to a request by the Government for advice on how the MPEG-4 and DVB-T2 technologies could be introduced to the DTT platform and the potential use of regulatory powers by the Government and Ofcom to bring this about. That statement therefore set out certain specific recommendations to the Secretary of State, including provisions that Ofcom believes are required pursuant to a statutory order by him to enable the reorganisation, to hold a competition for any upgraded capacity on Multiplex B, and issues relating to empowering Ofcom to vary and issue certain licences.
- 1.2 On 18 April 2008, the Department for Culture, Media and Sport (DCMS) published a consultation paper which set out its proposals to make a statutory order under section 243 of the Communications Act 2003 (the “**2003 Act**”) in light of Ofcom’s recommendations. On 9 June 2008, the Secretary of State for Culture, Media & Sport made The Television Multiplex Services (Reservation of Digital Capacity) Order 2008 (the “**2008 Order**”) in exercise of the powers conferred on him under section 243. The 2008 Order was laid before Parliament on 10 June 2008 and it came into force on 2 July 2008.³
- 1.3 On 11 June 2008, Ofcom published this Notice in draft form.⁴ The reason for that draft notice was simply to assist potentially interested applicants with their preparation of any application(s) to respond to Ofcom’s invitation to apply for Multiplex B capacity as contained in this Notice. This was because Ofcom had decided to give no longer than six weeks for applications to be made upon publication of this Notice for reasons set out in the cover note to the draft notice.

Summary of this Notice

- 1.4 Ofcom has exercised its powers and obligations under the 2008 Order by publishing today on its website this Notice in writing for the purposes of bringing it to the attention of all persons who may be affected by it, directly or indirectly.
- 1.5 Accordingly, Ofcom hereby gives notice that it proposes to reserve capacity sufficient for broadcasting on Multiplex B of two high definition television services (as defined in the 2008 Order). Ofcom therefore invites applications from relevant public service broadcasters (“**Relevant PSBs**”) (as defined in section 243(7) of the 2003 Act) as the only persons eligible to apply and be reserved such capacity under the terms of the 2008 Order.
- 1.6 The remainder of this Notice specifies details given by Ofcom for the purposes of making such applications (including about the proposed capacity and coverage area)

¹ <http://www.ofcom.org.uk/consult/condocs/dttfuture/statement/>

² <http://www.ofcom.org.uk/consult/condocs/dttfuture/>

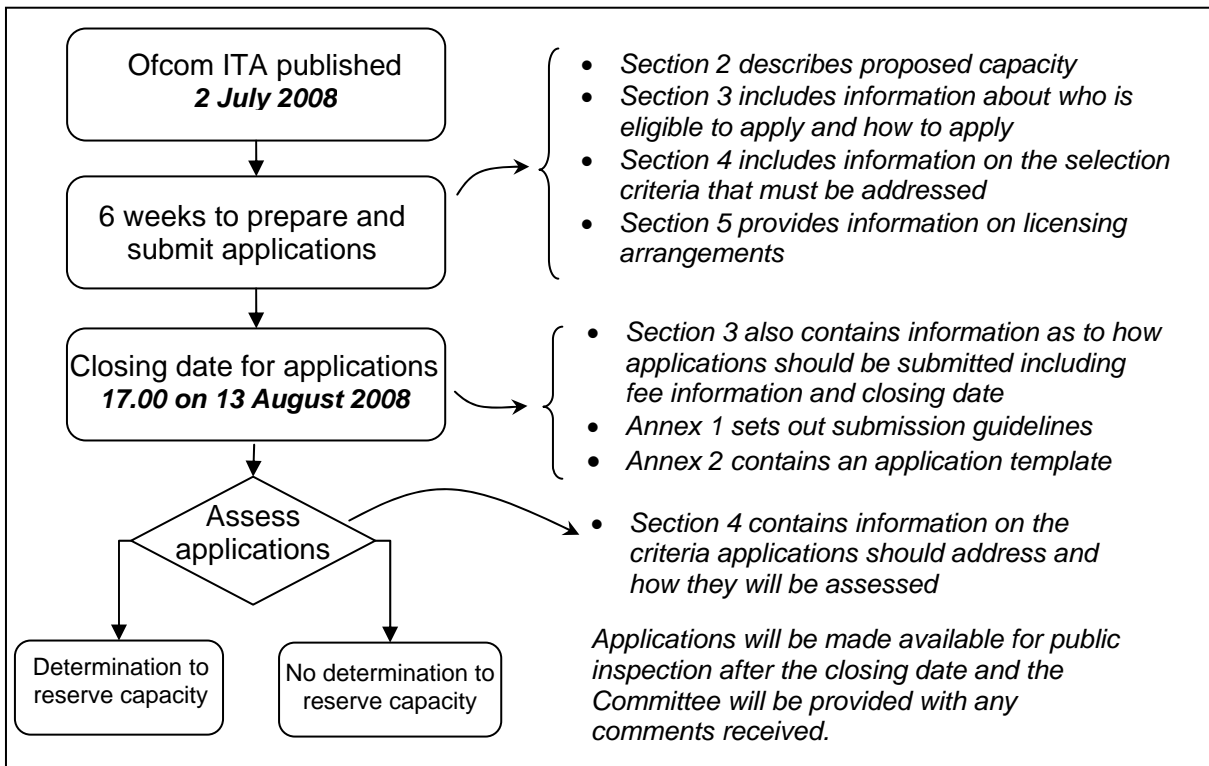
³ A copy of the 2008 Order (SI 2008/1420) is available at the website of the Office of Public Sector Information (OPSI): http://www.opsi.gov.uk/si/si2008/pdf/uksi_20081420_en.pdf

⁴ See Ofcom’s document entitled “Notice of Invitation to Apply for DTT Multiplex B capacity – Draft Statutory Notice” available at: <http://www.ofcom.org.uk/consult/condocs/dttfuture/draftinvite/draftita.pdf>

as well as requirements that applications must meet to comply with the 2008 Order. Ofcom also draws applicants' attention to certain licensing information to be taken into account when making their applications.

- 1.7 The closing date for the receipt by Ofcom of completed applications will be 17.00 on Wednesday 13th August 2008. Applicants are referred to Section 3 and Annexes 1 and 2 for further submission details. A fee of £15,000 (fifteen thousand pounds) will be payable for each application submitted. This fee will not be refundable in any circumstances.
- 1.8 All non-confidential aspects of applications will be published on the Ofcom website (www.ofcom.org.uk) for public inspection after the closing date.
- 1.9 Figure 1 below summarises diagrammatically the process that will apply following the publication of this Notice.

Figure 1: Application process overview



Alterations and disclaimer

- 1.10 Ofcom reserves the right to alter or correct any part of this Notice at any stage before the closing date for applications. Any additional documents referred to in this Notice may also be amended from time to time. Any such alterations, corrections or supplementary information will be made available on the Ofcom website www.ofcom.org.uk.
- 1.11 Information is supplied on a wide range of matters in this Notice, many of which depend on interpretation of the law. The information given 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 issued by

Ofcom, whether in this Notice or elsewhere, imply any judgement by Ofcom as to commercial prospects for the applications, or that licensed services will be profitable.

- 1.12 Persons eligible to apply and have capacity reserved for the purposes of this Notice must make their own independent assessment after taking their own professional advice and making such further investigations as they deem necessary on all relevant matters.
- 1.13 Ofcom makes no representation or warranty, express or implied, with respect to information contained in this Notice (together with other documents referred to in this Notice as well as any other information published by Ofcom related to matters relevant to this Notice, including such information that Ofcom may publish in relation to applications received) or with respect to any written or oral information made or to be made available to any potential applicant or its professional advisers. Any liability therefore is expressly disclaimed and Ofcom does not therefore accept liability for any losses, expenses or damage otherwise suffered or incurred as result of preparing any applications based on or pursuant to this Notice or otherwise relying on information set out herein, whether or not applications are submitted, and whether or not they are successful.

Glossary

- 1.14 The glossary below is simply a guide to the shorthand meaning of certain expressions (or abbreviations) as they are used in this Notice (unless the context otherwise suggests), without setting out the full meaning any such expressions might have at law.

Expression	Meaning
1990 Act	Broadcasting Act 1990 (1990 c 42).
1996 Act	Broadcasting Act 1996 (1996 c 55).
2003 Act	Communications Act 2003 (2003 c 21).
2008 Order	The Television Multiplex Services (Reservation of Digital Capacity) Order 2008 (S.I. 2008/1420). Available from www.opsi.gov.uk
ancillary service	<p>An ancillary service is defined in section 24(2) of the 1996 Act (as amended by the 2003 Act) as "...any service which is provided by the holder of a digital programme licence or by a relevant public service broadcaster and consists in the provision of:</p> <p>(a) assistance for disabled people in relation to some or all of the programmes included in a digital programme service or qualifying service provided by him;</p> <p>(b) a service (apart from advertising) that relates to the promotion or listing of programmes included in such a service or in a digital sound programme service so provided; or</p> <p>(c) any other service (apart from advertising) that is ancillary to one or more programmes so included, and relates directly to their contents."</p> <p>An example of this service is one that includes text, audio or data which is ancillary to the service (such as subtitling or audio-description).</p>
April 2008 Statement	Ofcom's policy statement entitled "Digital Television: Enabling New Services – Facilitating efficiency on DTT", as published on 3 April

	2008: http://www.ofcom.org.uk/consult/condocs/dttfuture/statement/
Committee	Members of Ofcom's DTT Allocation Committee to whom the Ofcom Board has delegated authority to discharge Ofcom's functions in relation to matters covered by this Notice; the Terms of Reference for this Committee will be published on the Ofcom website at http://www.ofcom.org.uk/about/csg/
DRL	Digital Replacement Licence. Licences granted to provide services under Part 1 of the Broadcasting Act 1990 (as amended) and Part 3 of the Communications Act 2003. There are currently nineteen DRL licences in total covering the Channel 3 regions, GMTV, Channel 4, Five and the public teletext service. Copies of the current DRL licences are available at: http://www.ofcom.org.uk/tv/ifi/tvlicensing/
DSO	Digital switchover. Details of the DSO process and timing are available on Ofcom's website (see http://www.ofcom.org.uk/tv/ifi/tech/dsodetails in relation to transmission details) and certain other DSO related websites, such as www.digitaluk.co.uk and www.digitaltelevision.gov.uk .
DTPS	Digital television programme service. This expression is defined in section 1(4) of the 1996 Act (as amended by the 2003 Act) as "...a service consisting in the provision by any person of television programmes (together with any ancillary services, as defined by section 24(2)) with a view to their being broadcast in digital form so as to be available for reception by members of the public, whether by him or by some other person, but does not include— (za) a service provided under the authority of a licence under Part 1 of the 1990 Act to provide a television licensable content service; (a) a qualifying service; (b) a teletext service; or (c) any service in the case of which the visual images to be broadcast do not consist wholly or mainly of images capable of being seen as moving pictures, except, in the case of a service falling within paragraph (b) or (c), to the extent that it is an ancillary service." See further Ofcom's DTPS guidance published ⁵ on 31 March 2008 for further information.
DTAS	Digital television additional service (or digital additional television service). This expression is defined in section 24(1) of the 1996 Act (as amended by the 2003 Act) as "...any service which— (a) is provided by a person with a view to its being broadcast in digital form (whether by him or some other person) so as to be available for reception by members of the public; (b) is so provided with a view either— (i) to the broadcasting being by means of a television multiplex service or by means of a general multiplex service; or

⁵ http://www.ofcom.org.uk/tv/ifi/tvlicensing/guidance_notes_and_apps/notes/200803.pdf

	<p>(ii) to the members of the public in question being or including members of the public in an EEA State other than the United Kingdom, or in an area of such a State;</p> <p>and</p> <p>(c) is not a Channel 3 service, Channel 4, Channel 5, a public television service of the Welsh Authority, the digital public teletext service, a digital programme service, a digital sound programme service, an ancillary service or a technical service.”</p> <p>See further Ofcom’s DTAS guidance published⁶ on 31 March 2008 for further information.</p>
high definition television service	<p>This expression (in this Notice abbreviated as “HD service”) is defined in article 2 of the 2008 Order as “...a television service which is broadcast in a format designed to display the images comprising a television programme by employing either 720 or 1080 lines of pixels per frame”.</p>
Multiplex B	<p>The television multiplex service which, on the day the 2008 Order is made, BBC Free To View Limited is authorised to provide by virtue of the licence to that effect (the “Multiplex B licence”⁷) granted under Part 1 of the 1996 Act by the Independent Television Commission on 16th August 2002.</p>
Ofcom	<p>Office of Communications.</p>
Public Service DTPS	<p>Public service digital television programme service (in this Notice abbreviated as “Public Service DTPS”).</p> <p>An expression defined in article 5 of the 2008 Order as “a [DTPS] provided by a [Relevant PSB] under a digital programme licence which—</p> <p>(a) has been granted by Ofcom (whether under article 3(9) or subsequently) under section 18 of the 1996 Act (licensing of DTSPs), as modified by article 6; and</p> <p>(b) accords with section 19 of that Act (duration and conditions of digital programme licences), as modified by article 7;</p> <p>and in this Order such a licence is referred to as a “public service digital programme licence”).”</p> <p>The expression “digital programme licence” means, by virtue of section 18(1) of the 1996 Act, a licence to provide a DTPS.</p>
Notice	<p>This notice of invitation to apply, as published in accordance with the 2008 Order by Ofcom on 2 July 2008.</p>
Qualifying Service	<p>This expression is defined in section 2(2) of the 1996 Act (as amended by the 2003 Act) as “...any of the following, so far as they are provided with a view to their being broadcast in digital form—</p> <p>(a) a television broadcasting service included in Channel 3;</p> <p>(b) Channel 4;</p> <p>(c) Channel 5;</p> <p>(d) S4C Digital;</p>

⁶ http://www.ofcom.org.uk/tv/ifi/tvlicensing/guidance_notes_and_apps/notes/200803.pdf

⁷ The Multiplex B licence is available at: <http://www.ofcom.org.uk/tv/ifi/tvlicensing/muxlicensees/mb/>

	<p>(e) a television programme service provided by the Welsh Authority with the approval of the Secretary of State under section 205 of the 2003 Act;</p> <p>(f) the digital public teletext service.”</p>
relevant public service broadcaster	<p>This expression (in this Notice abbreviated as “Relevant PSB”) is defined in section 243(7) of the 2003 Act as “...any of the following—</p> <p>(a) the holder of a licence to provide a Channel 3 service;</p> <p>(b) C4C;</p> <p>(c) the holder of a licence to provide Channel 5;</p> <p>(d) the Welsh Authority;</p> <p>(e) the public teletext provider.</p>
standard definition television service	<p>This expression (in this Notice abbreviated as “SD service”) is defined in article 2 of the 2008 Order as “...a television service which is broadcast in a format designed to display the images comprising a television programme by employing 576 active lines of pixels per frame”.</p>
Television Service	<p>This expression is defined in article 2 of the 2008 Order as “...any DTPS or qualifying service.” It also includes a Public Service DTPS.</p>

Section 2

Proposed digital capacity

Invitation to apply

- 2.1 By this Notice, Ofcom hereby states in accordance with article 3(3)(a) of the 2008 Order that it proposes to reserve certain digital capacity on Multiplex B through a comparative selection process for one or more Relevant PSBs.
- 2.2 Accordingly, Ofcom invites, in accordance with article 3(3)(e) of the 2008 Order, Relevant PSBs to make applications complying with the application requirements set out in Section 3 of this Notice for such amount of digital capacity as is specified in this Section below for reservation on Multiplex B to successful applicant(s).

Structure of this Notice

- 2.3 This Section also specifies in accordance with article 3(3)(b)(ii) and (iii) of the 2008 Order:
- 2.3.1 the area or areas within the British Islands⁸ where that capacity will be available; and
 - 2.3.2 the transmission and coding technologies which Ofcom proposes should be employed for broadcasting services by means of that capacity.
- 2.4 The remainder of this Notice gives further details of:
- 2.4.1 eligibility and application requirements, including the specified closing date for the receipt by Ofcom of duly completed applications and the non-refundable fee for each application: see Section 3;
 - 2.4.2 the assessment process, including the nature of the services which in Ofcom's opinion should be broadcast by means of any digital capacity reserved on Multiplex B as well as the criteria against which Ofcom will determine whether or not to reserve the digital capacity to one or more Relevant PSBs: see Section 4; and
 - 2.4.3 licensing matters, including the terms and conditions Ofcom proposes should apply to services provided by Relevant PSBs for broadcasting by means of that capacity: see Section 5.

The proposed digital capacity

Capacity allocated to Multiplex B

- 2.5 The power for Ofcom to reserve capacity under the 2008 Order (and therefore also Ofcom's invitation to apply as set out above) relates only to digital capacity already allocated to the holder of the Multiplex B licence (i.e. BBC Free to View Ltd). Thus, by making the 2008 Order, the Secretary of State has exercised the powers conferred

⁸ That is to say, the United Kingdom, the Channel Islands and the Isle of Man: see the Interpretation Act 1978 (c. 30), sections 5 and 23 and Schedule 1.

on him by sections 243 and 402(3) of the 2003 Act in relation to the frequency band already reserved for the broadcasting of television multiplex services.

- 2.6 In relation to the relevant reserved frequency band, it is to be noted by way of background that the Secretary of State by a Notice of Assignment of Frequencies dated 5 November 1996 assigned for multiplex services the frequencies between 470MHz and 582MHz as well as 614MHz and 854MHz. Under the UK's Plan for Frequency Authorisation (as published by Ofcom), the frequency range between 470MHz and 854MHz has since been allocated for the purposes of "Terrestrial TV Broadcast Transmission (UHF Analogue and Digital)".
- 2.7 The specific frequencies within that frequency band, as allocated to the holder of the Multiplex B licence, for the use in the provision of that multiplex service are specified in the Annex to the Multiplex B licence, as amended from time to time. Details of the coverage that these frequencies are expected to be capable of delivering is described in further detail in paragraphs 2.29 to 2.30, whereas the expected timing of such that capacity as is proposed to be reserved by Ofcom for Relevant PSBs is discussed in the subsection beginning at paragraph 2.21 below.
- 2.8 In light of the above, the nature of (and right to) any capacity proposed to be reserved by Ofcom under this Notice is one of securing that the holder of the Multiplex B licence will use that capacity for the broadcasting of services provided by the Relevant PSB to whom the capacity has been reserved under the terms and conditions applying to it. This regulatory obligation on the holder of the Multiplex B licence will be ensured by Ofcom following any determination to reserve the digital capacity (as discussed further in Section 4 of this Notice) by varying the Multiplex B licence; Section 5 of this Notice provides further details of this licensing matter.

Total capacity for reservation

- 2.9 In accordance with article 3(12) of the 2008 Order, Ofcom has reason to consider it likely that, as from a date no later than that on which Ofcom proposes that any reservation of digital capacity on Multiplex B should take effect (see paragraphs 2.21 to 2.28 below regarding expected timing), there will be capacity on Multiplex B sufficient for the broadcasting of three HD services.
- 2.10 Therefore, pursuant to article 4(2)(a) of the 2008 Order, the total digital capacity that may be reserved for Relevant PSBs on Multiplex B during the period to which this Notice relates (and in respect of which Ofcom considers it likely that there is capacity on Multiplex B sufficient for the broadcasting of three HD services) is capacity sufficient for the broadcasting of two such services.
- 2.11 Accordingly, Ofcom specifies, in accordance with article 3(3)(b)(i) of the 2008 Order, the amount of digital capacity on Multiplex B which will be reserved for Relevant PSB(s) is capacity sufficient for the broadcasting of two HD services. Such reservation would mean, in effect, that the BBC Trust would oversee the use of capacity sufficient for at least one HD service of the total three HD services and Ofcom, through this comparative selection process, would regulate the use of the capacity sufficient for the other two HD services.
- 2.12 Ofcom further specifies that each application must be for not more than (and not less than) capacity sufficient for broadcasting of one HD service. Ofcom currently estimates that the actual amount of such capacity would correspond to approximately one third of the total digital capacity (taking into account the capacity needed for necessary overhead related to the operation of the multiplex) expected to be

available on Multiplex B following the adoption of the technical standards described in paragraphs 2.31 to 2.33 of this Notice.

- 2.13 Subject to the more detailed application requirements set out in Section 3 of this Notice, applicants should note that, while each application must be for not more than (and not less than) capacity sufficient for broadcasting of one HD service, they may make a separate application for capacity sufficient for broadcasting of another HD service, that is the remaining total capacity for reservation under this Notice. Such second application must also comply with the application requirements set out in Section 3.
- 2.14 Furthermore, in accordance with article 4(5) of the 2008 Order, Ofcom specifies that the above-mentioned capacity will be made available for the whole of each 24 hour day throughout the term of the reservation. However, in determining whether or not to reserve the capacity applied for (see further in Section 4 of this Notice), Ofcom may decide to reserve capacity for an applicant where the proposal does not provide for the provision of content for a full 24 hour period. In this instance, the applicant would still receive a full 24 hour reservation of capacity rather than only receiving capacity for the portion of the day the proposal relates to. Applicants should note that any other services carried on reserved capacity are subject to obtaining Ofcom's prior written consent as described in more detail in paragraphs 5.45 to 5.47.
- 2.15 Ofcom wishes to make it clear that the capacity being reserved represents the average amount of capacity that the individual applicant will have access to over time. The specific amount of capacity used at any one point in time is likely to fluctuate between certain Mb/s of capacity according to the demands of the coding equipment and services. This will enable the holder of the Multiplex B licence to utilise statistical multiplex techniques to maximise the efficiency of the MPEG-4 video coding and multiplexing equipment.

Future reservation of capacity for a third HD service

- 2.16 As the MPEG-4 standard has only relatively recently been introduced, Ofcom expects in line with previous experience of MPEG-2 equipment that manufacturers of MPEG 4 coding equipment will be able to improve the efficiency at which their equipment is able to compress video signals. Hence, Ofcom expects that the capacity required to broadcast one HD service using the standards specified in paragraphs 2.31 to 2.33 below will decrease over time. Ofcom therefore reserves the right to amend any determination to reserve capacity proposed under this Notice at some point in the future in accordance with the provisions of the 2008 Order⁹ or, as the case may be, any further order made by the Secretary of State in the future.
- 2.17 Furthermore, Ofcom expects that due to efficiency improvements noted above there will eventually be capacity sufficient for the broadcasting of four HD services on Multiplex B. When Ofcom is satisfied¹⁰ that there is capacity sufficient for the

⁹ The possibility of Ofcom exercising its functions under the 2008 Order on more than one occasion is recognised in article 3(14); furthermore, article 4(6) envisages the possibility of Ofcom varying the Multiplex B licence following any determination to reserve capacity sufficient for the broadcasting of a third HD service.

¹⁰ Under the terms of the 2008 Order, Ofcom has to be satisfied that there will be capacity sufficient for the carriage of three HD services on Multiplex B before making a reservation for such capacity. Subsequent to this Ofcom is further required to consider the point at which Multiplex B will be capable of carrying a fourth HD service. At that point Ofcom will be able to make a further reservation for a third HD service on Multiplex B. The Multiplex B operator or broadcasters who have been previously reserved capacity may request that Ofcom consider this issue. If either so request they will be asked

broadcasting of at least four HD services on Multiplex B, Ofcom may then reserve capacity sufficient for a third HD service under the terms of the 2008 Order.

- 2.18 Also, in the April 2008 Statement, Ofcom stated that it would continue to explore whether it is possible to identify any additional frequencies that could be used to provide carriage of the new services in regions which complete switchover later in the DSO process. This would, in Ofcom's view, provide a further opportunity to drive take up of the new services. Ofcom also noted that it would aim to consult on this issue later in 2008.
- 2.19 By way of example, Ofcom has provisionally identified a frequency in London which could be used to extend the coverage of the Multiplex B service to up to 3.7 million households up to two years earlier than the currently planned DSO schedule for this region in 2012. This, as with any other possible frequencies Ofcom might identify, will be subject to a separate consultation (as Ofcom announced in the April 2008 Statement) and Ofcom has not therefore taken any decision taken on this matter, nor can Ofcom guarantee the outcome of that process.
- 2.20 Ofcom nonetheless wishes to draw applicants' attention to this possible future development and, if so, its potential implications for any capacity reserved under this Notice. In particular, Ofcom's current emerging thinking is that any such additional frequencies would (if Ofcom so decides following any consultation) be identified and allocated by Ofcom to the holder of the Multiplex B licence. Such decision (if any) would mean that the coverage of the high capacity services carried on Multiplex B would be extended to other parts of the British Islands earlier than currently authorised by the Multiplex B licence.

Expected timing for availability of capacity

- 2.21 As noted above, Ofcom considers it likely that, as from a date no later than that on which Ofcom proposes that any reservation of digital capacity on Multiplex B should take effect, there will be capacity on Multiplex B sufficient for the broadcasting of three HD services.
- 2.22 The digital capacity referred to in paragraphs 2.5 to 2.15 is expected to become available after the migration of existing services from Multiplex B to other multiplexes and on the completion of a technical upgrade of Multiplex B from its current compression and modulation standards (i.e. MPEG-2 and DVB-T) to the new standards (i.e. MPEG-4 and DVB-T2).
- 2.23 Currently, Multiplex B operates with DVB-T and MPEG-2 technology using a 16QAM modulation mode. This provides about 18Mb/s of digital capacity – currently able to realistically deliver only one HD service. The transition to the new standards is expected to increase the capacity to at least 30Mb/s¹¹. Based on a benchmark transmission format of 720p, Ofcom expects that this capacity will be sufficient to carry three HD services from the target date defined below. However, it should be noted that applicants are not restricted to this format and may use higher resolution HD formats as they deem appropriate.

to provide Ofcom with appropriate evidence as to why Multiplex B will be capable of carrying four HD services at a specified point in the future..

¹¹ The ability to deliver three HD services on a multiplex upgraded to the new standards is in part due to the new standards but also due to the gains that statistical multiplexing of 3 HD video streams bring.

- 2.24 Ofcom is unable, at present, to specify absolutely the precise time at which the capacity would actually become available. However, Ofcom considers that a realistic target date is on or about 1 November 2009¹² for the Granada region. This target date is based in particular upon Ofcom's estimates that consumer equipment capable of receiving services carried on the upgraded Multiplex B will start to become available from the fourth quarter of 2009. Ofcom further estimates that the necessary infrastructure for transmitting the new standards can also be made available in the Granada region from this date.
- 2.25 Ofcom explained in its April 2008 Statement, which made recommendations to the Secretary of State to make the 2008 Order, that the migration to the new standards could only take place on a region by region basis at DSO when the transmission standard of all of the multiplexes will be aligned to 64QAM¹³. In other words, Ofcom expects that the migration and technical upgrade should occur where possible when each region undergoes DSO. This being a process that is being implemented across the UK according to a timetable set down by the Government and implemented by Ofcom through its relevant licensing arrangements, such as the DRLs and Multiplex licences. Further details relating to DSO are provided in the Glossary.
- 2.26 Ofcom therefore proposes that the adoption of the new technical standards on Multiplex B, and hence the reorganisation of services on the platform, should take place in the Granada region at or around the target date specified above and should thereafter be adopted in any regions that undergo DSO after this date.
- 2.27 Ofcom notes that there will be considerable uncertainty about the exact timing of this transition which will not be resolved until further work has been carried out by the multiplex operators, equipment manufacturers, broadcasters and other stakeholders. Ofcom therefore proposes to insert a timetable in the Multiplex B licence and other licences as appropriate. This timetable will be subject to subsequent change as may be agreed in writing between Ofcom and the licensee.
- 2.28 Ofcom also expects that the operator of Multiplex B (BBC Free to View Limited) will propose a timetable for Ofcom's agreement for the migration and technical upgrade of Multiplex B in regions that will have undergone DSO on dates prior to this. We would expect that this will be agreed later this year once necessary network upgrade planning has been completed.

The proposed coverage area

- 2.29 The frequencies allocated by Ofcom for use by the operator of Multiplex B comprise assignments at a number of transmission sites throughout the UK, Channel Islands and the Isle of Man. When operated at the power specified in Annex A, Part 10 to the Multiplex B licence, these frequencies will allow the coverage of Multiplex B to substantially match that of the other two public service multiplexes (namely, Multiplex 1, as operated by the BBC, and Multiplex 2, as operated by Digital 3&4). Taken

¹² This date is stated for the purpose of Article 3(12) of the 2008 Order. In other words, Ofcom considers it likely that as from that date on which it proposes any reservation of capacity on Multiplex B should take effect from there will be capacity on Multiplex B sufficient for the broadcasting of at least three HD services. The exact implementation date will, however, be subject to discussions with stakeholders, such as Multiplex licence holders and network operators.

¹³ At paragraphs 5.16 to 5.18 of the April 2008 Statement, Ofcom concluded that, in addition to Multiplex B, the three Ofcom licensed multiplexes operating on 16QAM (i.e. BBC's Multiplex 1 and Multiplexes C and D operated by NGW) should be required to change to 64 QAM at DSO, and that Ofcom intended to amend the Reference Parameters to reflect these new mode change requirements.

together, the coverage of these three multiplexes is predicted to cover at least 98.5% of UK households.

- 2.30 Ofcom proposes, in accordance with article 3(3)(b)(ii) of the 2008 Order, that the capacity (as specified above) will be made available throughout the coverage area noted in paragraph 2.29 above to carry Television Services, together with possible additional services discussed in Section 4, to be broadcast throughout the British Islands so as to be available for reception by members of the public on a free to air basis and otherwise subject to the requirements in the Multiplex B licence relating to coverage.

The proposed transmission and coding technologies

- 2.31 Ofcom proposes, in accordance with article 3(3)(b)(iii) of the 2008 Order, that the transmission and coding technologies that should be employed for broadcasting services by means of the digital capacity specified above are DVB-T2 (draft EN 302 755 v1.1.1¹⁴) and MPEG-4 (ISO/IEC 14496 part 2 and part 10).
- 2.32 Ofcom regulates the use of technical standards on the DTT platform. This is implemented through a requirement on Multiplex licensees (including the holder of the Multiplex B licence) and DRL holders to comply with the Technical Performance Code (and the more detailed document on Reference Parameters, the current version of which is Issue 4 of 13 September 2007¹⁵).
- 2.33 Ofcom will amend the Reference Parameters document to require the use of MPEG-4 and DVB-T2 standards on Multiplex B once there has been adequate testing of the MPEG-4 and DVB-T2 combination of technologies and a UK profile is settled; we expect this will be late 2008 or early 2009. To this end, Ofcom is now working with the multiplex operators, broadcasters and other parties (including standards bodies) to test transmission and receiver characteristics of the DVB-T2 and MPEG-4 combination to determine the appropriate profile for the UK. This will be done through an over the air pilot scheme that is expected to commence in the latter part of 2008.

¹⁴ At its 58th meeting on 26 June 2008, the DVB Steering Board ratified and published the DVB-T2 specification. The specification has now been submitted to ETSI (European Telecommunications Standards Institute) for standardisation and has been published on DVB's website (www.dvb.org) as [BlueBook A122](#).

¹⁵ http://www.ofcom.org.uk/tv/ifi/tech/codes_guidance/

Section 3

Eligibility and application requirements

Persons to whom Ofcom may reserve capacity

- 3.1 Pursuant to the terms of the 2008 Order, Ofcom may only reserve the digital capacity referred to in Section 2 of this Notice for one or more Relevant PSBs, namely any of the following (pursuant to section 243(7) of the 2003 Act):
- 3.1.1 the holder of a licence to provide a Channel 3 service¹⁶;
 - 3.1.2 Channel Four Corporation;
 - 3.1.3 the holder of a licence to provide Channel 5¹⁷;
 - 3.1.4 the Welsh Authority¹⁸;
 - 3.1.5 the public teletext provider¹⁹.
- 3.2 Accordingly, the invitation to apply for capacity under this Notice extends only to such persons. Applications received from persons other than those listed above will not be considered by Ofcom.

Applications by Channel 3 licensees

- 3.3 Given the nationwide system of Channel 3 services and the positive public benefits that are likely to accrue from the equivalent service being available throughout the UK, Ofcom expects that any bid for capacity from the Channel 3 licensees will comprise all current holders of a regional Channel 3 licence as well as the national licence holder if the application includes a proposal to provide a full simulcast service from all current Channel 3 DRL holders.
- 3.4 However, in accordance with article 3(5) of the 2008 Order, a person who is a Relevant PSB by virtue of holding a Channel 3 licence may make an application in response to this Notice only if that person makes it on behalf of at least 13 holders of regional²⁰ Channel 3 licences. Accordingly, such an application will comply with the application requirements set out in paragraphs 3.12 to 3.17 of this Notice only if it contains a statement to the effect that the application is made on behalf of at least 13 holders of regional Channel 3 licences. A pro forma declaration is included in Annex

¹⁶ Pursuant to section 362(1) of the 2003 Act, a Channel 3 service means a television broadcasting service comprised in Channel 3. That section also defines the meanings of a television broadcasting service (which excludes a service provided under DTSP licence) and Channel 3 (which shall have the same meaning as in Part 1 of the 1990 Act, see section 71), respectively.

¹⁷ Pursuant to section 362(1) of the 2003 Act, Channel 5 shall have the same meaning as in Part 1 of the 1990 Act, see section 71.

¹⁸ Pursuant to section 405(1) of the 2003 Act, the Welsh Authority means the authority whose name is, by virtue of section 56(1) of the 1990 Act, Sianel Pedwar Cymru (known as S4C).

¹⁹ The public teletext provider has the meaning set out in section 362(1) of the 2003 Act.

²⁰ There are 16 Channel 3 licences in total. The GMTV licence only is a national licence while the remaining 15 are all regional Channel 3 licences. ITV plc owns the majority of the Channel 3 licences either outright or in the case of GMTV, ITV plc owns 75%. The exceptions are Ulster Television, Channel Television, Scottish Television and Grampian Television.

2 by way of a statement as Ofcom may require under article 3(5)(a) of the 2008 Order.

Closing date for receipt of applications

- 3.5 In accordance with article 3(3)(f)(i) of the 2008 Order, Ofcom specifies that the closing-date for the receipt by Ofcom of applications complying with the application requirements set out in paragraphs 3.12 to 3.17 below will be 17.00 on Wednesday 13th August 2008.
- 3.6 Ofcom reserves the right to determine as invalid and give no consideration to any applications received after the closing date.
- 3.7 It is the applicant's responsibility to ensure that his application as submitted is complete and conforms fully to the application requirements. While Ofcom may require applicants to furnish additional information about their proposals, applications may neither be amended, nor new material introduced, once they have been received by Ofcom (see further in Section 4 as to Ofcom's assessment process).

Non-refundable fee payable for each application

- 3.8 In accordance with article 3(3)(f)(ii) of the 2008 Order, Ofcom specifies that a fee of £15,000 (fifteen thousand pounds) will be payable for each application submitted. This fee will not be refundable in any circumstances, including whether or not the application is successful.
- 3.9 Payment of the application fee must also be received (i.e. the funds must be present in the Ofcom bank account) by the closing-date specified in paragraph 3.5 of this Notice.
- 3.10 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: 00740372, account name: Ofcom). Please note that any payments made using this method will take at least three working days to reach the Ofcom 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 it is received by Ofcom on that date.
- 3.11 Payment must be notified in advance to Ofcom's Sales Ledger team (fax: 020 7783 4901 or email: sales-ledger@ofcom.org.uk), with the notification including the following information:
- The words "ITA Mux B capacity" (in the mandate reference field);
 - the amount submitted;
 - the payee name;
 - the bank sort code;
 - the account name; and

- the anticipated receipt date.

Application requirements

- 3.12 In accordance with article 3(4) of the 2008 Order, any application received by Ofcom by the closing date specified in paragraph 3.5 of this Notice is only valid if it is made in writing and accompanied by the terms listed under this paragraph:
- 3.12.1 the non-refundable fee specified pursuant to paragraphs 3.8 to 3.11 of this Notice;
 - 3.12.2 details of the Television Services (which must include Public Service DTPS or Qualifying Services (but need not necessarily include proposals for any HD services) and DTAS (if any) the applicant proposes to provide if digital capacity is reserved for it by Ofcom, including details of the timetable according to which the applicant proposes to begin providing those services, in light of Ofcom's details of the nature of services which, in Ofcom's opinion, should be broadcast by means of that capacity (see paragraphs 4.50 to 4.65 of this Notice);
 - 3.12.3 a detailed explanation of the manner in which (in the view of the applicant) those services, if provided as proposed, would further all of the objectives forming part of Ofcom's assessment criteria, as set out in Section 4 of this Notice;
 - 3.12.4 the applicant's proposals for promoting the adoption by members of the public of reception equipment which is compatible with the transmission and coding technologies specified by Ofcom as set out in paragraphs 2.31 to 2.33 of this Notice;
 - 3.12.5 in the case of a person who is a Relevant PSB by virtue of holding a Channel 3 licence making an application in response to this Notice, the statement required by Ofcom, as referred to in paragraph 3.4 of this Notice; and
 - 3.12.6 such other information as Ofcom requires for the purposes of considering the application as is set out below, together with the specification in paragraph 2.12 that each application must be for not more than (and not less than) capacity sufficient for broadcasting one HD service.
- 3.13 As regards such information as Ofcom may reasonably require for the purposes of considering the application, applicants' attention is drawn to the following parts of this Notice where this information is set out:
- 3.13.1 Annex 1, which sets out Ofcom's guidelines for the submission of applications; and
 - 3.13.2 Annex 2, which sets out the structure and format of Ofcom's prescribed presentation of an application.
- 3.14 Only in exceptional circumstances will Ofcom regard as valid an application which does not comply with the requirements set out in Annexes 1 and 2. Ofcom's decision on whether an application complies with such requirements is final.
- 3.15 Such additional information required by Ofcom in an application will also include:

- 3.15.1 a statement by the applicant confirming that, save as to any confidential information redacted and presented as prescribed by Ofcom in Annexes 1 and 2, he agrees that Ofcom may publish on its website or otherwise disclose the applicant's original application, together with his responses to any request by Ofcom for the applicant to furnish additional information about his proposals (apart from any part of such a response that the applicant has requested that Ofcom should keep confidential and which part has been included in a separate annex to the response clearly and visibly marked 'confidential');
 - 3.15.2 if applicants believe that their proposals should be treated as a Qualifying Service and hence be licensed through the variation of an existing DRL, then they must state this in the application along with their reasoning as to why they believe this to be the case;
 - 3.15.3 a statement by the applicant declaring that, if the application is successful and Ofcom so determines to reserve capacity, Ofcom may treat his application as giving the applicant's consent to all such variation(s) to his DRL (if relevant) as may be required in Ofcom's opinion to give effect to such reservation, this being subject to making representations to Ofcom regarding the wording of any such variations;
 - 3.15.4 if the application is by Channel 3 licences and it is not on behalf of all the regional Channel 3 licensees, then the application must clearly explain how the applicant will obtain any necessary rights to allow them to broadcast the proposed service throughout the coverage area (i.e. within the Channel 3 regions not participating in the application).
- 3.16 As soon as reasonably practicable after an initial review of applications, Ofcom will send a letter to any applicant whose application is judged by Ofcom to be invalid by reference to above-mentioned application requirements, notifying him that his application will not be given further consideration by Ofcom. However, if it appears to Ofcom that an application on its face complies with those requirements, Ofcom will assess the application in accordance with the process set out in Section 4 of this Notice.
- 3.17 If it emerges at any time after receiving an application and before determining it that any information supplied to Ofcom by an applicant is false in any material aspect (whether the applicant knows it to be false or is reckless as to whether or not it is false) or an applicant has withheld material information knowingly or recklessly, Ofcom may reject the application at that stage. Section 5 of this Notice sets out the action Ofcom may take at any time after making a determination to reserve capacity (including after granting or varying any licence) to the applicant if it is satisfied that the applicant has provided such false or misleading information or so withheld material information.

Section 4

Assessment of applications

Assessment process

- 4.1 Pursuant to article 3(8) of the 2008 Order, Ofcom shall, in determining whether to reserve any of the capacity specified in Section 2 of this Notice and (if so) the applicant or applicants for whom Ofcom will reserve it, have regard in particular to the extent to which the services that an applicant proposes to provide for the broadcasting by means of that capacity appear to Ofcom to:
- 4.1.1 promote the efficient use of the radio spectrum, paying particular regard to how the content proposed to be included in those services would be likely to encourage members of the public to adopt reception equipment which is compatible with the transmission and coding technologies specified by Ofcom pursuant to paragraphs 2.31 to 2.33 of this Notice;
 - 4.1.2 contribute to the fulfilment of the purposes of public service television broadcasting in the British Islands, having regard to the desirability of those purposes being fulfilled in a manner that is compatible with section 264(6) of the 2003 Act (read as if those services were relevant television services within the meaning of that section); and
 - 4.1.3 contribute to enhancing or maintaining the range and diversity of high quality Television Services available on digital terrestrial television.
- 4.2 These three assessment criteria are discussed in more detail in paragraphs 4.28 to 4.49 below. Whilst the assessment criteria have been specifically derived by reference to Ofcom's general duties²¹, Ofcom is required to further (as well as have regard to) those duties where it carries out all of its functions (including under the 2008 Order). Ofcom has also provided applicants (in paragraphs 4.50 to 4.65) with details as to the nature of the services which, in Ofcom's opinion, should be broadcast by means of any reserved digital capacity.
- 4.3 Ofcom will assess applications against those assessment criteria and its general duties based upon the written information and proposals presented in completed applications that comply with the application requirements prescribed by Ofcom in Section 3 of this Notice. As noted in Section 3, it is the applicant's responsibility to ensure that any application submitted is complete and conforms fully to those requirements. Applications may neither be amended, nor new material introduced, once they have been received by Ofcom.
- 4.4 However, in the course of assessing applications, Ofcom may pursuant to article 3(6) and (7) of the 2008 Order seek clarification and/or amplification of the information or proposals in any application and may require any applicant to furnish Ofcom with such additional information in such form or verified in such manner as Ofcom may specify. This will usually be done through questioning by a single letter, which will be sent to the individual nominated in the application. Further questions, if appropriate, may be put by telephone, or by e-mail, as well as by letter.

²¹ The 2003 Communications Act sets out Ofcom's general and specific duties.
http://www.opsi.gov.uk/acts/acts2003/ukpga_20030021_en_1

- 4.5 In addition and in exceptional circumstances only, Ofcom may meet with any applicant in order to seek clarification of aspects of their application. Limited notice (possibly less than 24 hours) might be given but, if possible, Ofcom will indicate by e-mail to the applicant's nominated contact person the issue(s) to be covered in the meeting, so that the applicant can bring relevant staff or advisers. One or more members of the (Ofcom) Committee, together with Ofcom staff and advisers, may be present at such meetings. A transcript of any such meeting may be taken by Ofcom or, alternatively, a file note to be agreed by the applicant.
- 4.6 To provide as much transparency as possible and allow for public inspection²², all applications (save for confidential information) received by Ofcom will be published on its website following the closing date of applications. The Committee will take into account any comments received from the public but due to the tight timescales comments may only be made for two weeks after Ofcom publishes applications on its website. Applications will appear on the website alongside the Notice as soon as is reasonably practicable after the closing date. Non-confidential responses to any clarifications or amplifications requested by Ofcom will also be published on the Ofcom website, alongside the original application.
- 4.7 As part of the assessment process, Ofcom will also need to be satisfied that an applicant is a fit and proper person to hold a Public Service DTSPS licence and is not disqualified from doing so, where Ofcom considers it necessary to grant such a licence. The 2008 Order expressly provides that for this purpose Ofcom shall not be prevented from granting a Public Service DTSPS to the Welsh Authority.

Procedures for decision-making

- 4.8 The members of the Committee will receive a copy of every valid application submitted in response to this Notice. Details of the membership, as well as the terms of reference, of the Committee are published on the Ofcom website²³.
- 4.9 To assist the Committee's assessment of applications, each application will be assigned a score by Ofcom staff to reflect the extent to which it appears to satisfy each of the three assessment criteria. This simple scoring system will, in particular, be used by Ofcom staff to highlight the different strengths and weaknesses of each application when preparing briefing material for the Committee.
- 4.10 However, it should be noted that these scores are only intended to provide the Committee with an approximate comparison of different aspects of applicants' proposals, and will be used for initial guidance rather than for the specific purpose of determining the successful applicant. Other factors, such as Ofcom's general duties, may well play a part in the Committee's determination. Such scores will therefore not bind the Committee, nor will any overall total score be assigned to each application, nor will the scores be published by Ofcom. It is also not necessarily the case that the application which achieves the highest scores across all three criteria will be successful.

²² Ofcom considers that its guidelines of November 2007 on how Ofcom consults do not apply in this context as the policy underlying this Notice has previously been publicly consulted upon by Ofcom. Nor, therefore, is Ofcom carrying out an Impact Assessment as described in Ofcom's separate guidelines of July 2005 because the policy on which Ofcom consulted and concluded in relation to matters covered by this Notice was put in place as a consequence of an Impact Assessment that Ofcom carried out at that time.

²³ <http://www.ofcom.org.uk/about/csg/>

- 4.11 A summary of each applicant's proposals, highlighting issues of relevance under each of the criteria drawn both from the original application and any subsequent questioning, will also be prepared (together with such scores as discussed above) by Ofcom staff and presented to the members of the Committee for consideration.
- 4.12 The Committee will consider each application by having regard, in particular, to the extent to which the services proposed appear in the Committee's opinion to meet the assessment criteria as discussed in more detail in paragraphs 4.28 to 4.49 below.
- 4.13 The Committee in making its decision will also have particular regard to the specific proposals applicants make in relation to the evening hours (beginning at 18.00 and finishing at 23.00) of each day²⁴ (the "**Evening Hours**") and any of their commitments made for daytime and night time hours other than in the Evening Hours. The Committee will be looking towards those aspects of both (i) the Evening Hours and (ii) the daytime and night time hours (other than in the Evening Hours) proposals that may be captured within a Public Service DTPS licence or, if appropriate, within an existing DRL. In light of this, the Committee will generally give less regard to those aspects of an applicant's proposals that cannot be captured within either of these licences. This also means that aspects of an application that would be captured by a DTAS licence will generally be given less regard by the Committee. Applicants' attention is drawn to the use of reserved capacity not captured by commitments as detailed in paragraphs 5.44 to 5.46.
- 4.14 As covered by Ofcom's application requirements in Section 3 of this Notice, an application must be accompanied by details of the Television Services, which must include Public Service DTPS or Qualifying Services (but need not include any HD services) and DTAS (if any) the applicant proposes to provide if digital capacity is reserved for it by Ofcom.
- 4.15 It should be noted that the Committee will be looking at applications in the round and will consider how the sum of the parts of an application brings overall value to consumers and citizens.
- 4.16 After it has considered all valid applications, the Committee will finally decide either:
- 4.16.1 to make a determination to reserve the proposed digital capacity to the successful applicant(s), or
 - 4.16.2 to make no determination to reserve such digital capacity.
- 4.17 Where the Committee makes a determination to reserve some or all of the proposed digital capacity, Ofcom shall, in accordance with article 3(9) of the 2008 Order, as soon as is reasonably practicable after making its determination:
- 4.17.1 publish, in such manner as it considers appropriate, the name of each applicant for whom such capacity is to be reserved, and such other information as Ofcom considers appropriate;
 - 4.17.2 grant to each such applicant a Public Service DTPS licence in respect of the services it proposes to provide, except in the case of any proposed service that appears to Ofcom to be a Qualifying Service or a DTAS; and

²⁴ That is, any period consisting of twenty-four consecutive hours counted from midnight to midnight.

- 4.17.3 treat any application that includes proposals for providing DTAS on such capacity (otherwise than as a service that is or is comprised in a Qualifying Service) as an application for a DTAS licence made by the applicant in question under and in accordance with section 25(1) of the 1996 Act.
- 4.18 Ofcom expects to announce the name of each successful applicant very shortly after the Committee has made its determination (see further from paragraph 4.22 below as to Ofcom's provisional timetable). The time required by Ofcom to make that announcement will, however, depend on the circumstances, such as any other information as Ofcom may consider appropriate to publish alongside that announcement (including the key determining factors under each of the criteria which led to the Committee's decision), taking account of matters such as the volume of applications and responses received by Ofcom.
- 4.19 Information regarding the expected timing for the grant of a Public Service DTSP licence, or the variation of a DRL should that be the case instead, is set out below.
- 4.20 Where Ofcom decides to make no determination to reserve digital capacity, or to make a determination reserving less digital capacity than is proposed in Section 2 of this Notice, Ofcom shall, pursuant to article 3(10) of the 2008 Order, publish its decision (and the reasons for it) as soon as reasonably practicable after reaching it. Ofcom currently expects to publish such decision (if any), together with reasoning, very shortly after the Committee has made its decision. Again, the actual time required by Ofcom to do so will depend on the circumstances.
- 4.21 In the event of either no capacity or capacity sufficient for just one HD service being allocated Ofcom would expect to run another allocation process for the unreserved capacity. Ofcom would expect to publish another statutory notice relating to such eventuality as soon as possible after the initial decision has been published.

Provisional timetable for reservation of capacity

- 4.22 Ofcom currently expects to complete its assessment and associated licensing process as set out below. This timetable is, however, subject to change, such as Ofcom requiring further time to assess applications received or otherwise deal with any matters arising from its assessment process.
- **9/10 June 2008:** The 2008 Order was made and laid before Parliament
 - **11 June 2008:** Ofcom published its draft ITA
 - **2 July 2008:** The 2008 Order came into force on
 - **2 July 2008:** Ofcom publishes its statutory notice constituting the ITA
 - **17.00 on 13 August 2008:** ITA process closes (responses to be published on website soon afterwards for public inspection)
 - **End September 2008:** Ofcom expects making its decision on applications
 - **End October 2008:** Ofcom expects issuing proposals for licences (i.e. Public Service DTSP or DTAS) and/or licence variations issued (multiplexes and DRLs)
 - **4 to 6 weeks** for representations on draft licence variations
 - **End of 2008:** Ofcom expects to issue licences and/or make licence variations
 - **November 2009:** Services expected to be launched in Granada region as at or around the target date (see paragraph 2.24); rollout follows DSO timetable.

Purdah rules

- 4.23 An important part of Ofcom's own regulatory principles²⁵ is to ensure that Ofcom's interventions are evidence-based, proportionate, consistent, accountable and transparent in both deliberation and outcome. Ofcom also considers it is important to ensure that there is no appearance of bias or conflicts of interests in relation to the assessment process to which this Notice relates. Ofcom therefore requires that the members of the Committee should do their utmost to ensure that their behaviour is not likely to give such an appearance.
- 4.24 For that reason, Ofcom has put in place a set of so-called 'purdah rules' that will govern the interaction of members of the Committee with the persons on the 'purdah list'. These rules are closely based on the purdah rules used by Ofcom in the allocation of radio licences. The purdah rules for the assessment process relating to this Notice are set out in Annex 3.

Collusion

- 4.25 Due to the number of persons (i.e. the Relevant PSBs only) eligible to apply for the proposed digital capacity on Multiplex B, there is a potential concern that collusion between potential applicants could take place.
- 4.26 Ofcom will take any allegations of collusion extremely seriously. Ofcom retains the right to exclude an application in its entirety if Ofcom is satisfied that any agreement, co-operation or practice has as its object or effect the prevention, restriction or distortion of competition. Applicants should therefore ensure that they have in place effective and actively implemented compliance programmes, which should have the visible and active support of senior management and should be appropriate specifically in relation to matters relevant to applications in response to this Notice.
- 4.27 In this regard, applicants should note that Ofcom has specified the only instances where bidders may enter into arrangements to submit an application based upon aggregated content from other Qualifying Services in paragraphs 4.66 to 4.70.

Assessment criteria

Ofcom's duties

- 4.28 As noted earlier in this Section, Ofcom is required to carry out all of its functions (including those under the 2008 Order) in accordance with its general duties under section 3 of the 2003 Act, namely to further the interests of citizens in relation to communications matters, and to further the interests of consumers in markets in relation to which Ofcom has functions, where appropriate by promoting competition.
- 4.29 Applicants' attention is drawn to the following two statutory objectives that Ofcom considers are particularly relevant in this context:
- 4.29.1 to secure the optimal use of the electro-magnetic spectrum; and
 - 4.29.2 to secure the availability of a wide range of television and radio services of high quality and wide appeal throughout the UK.

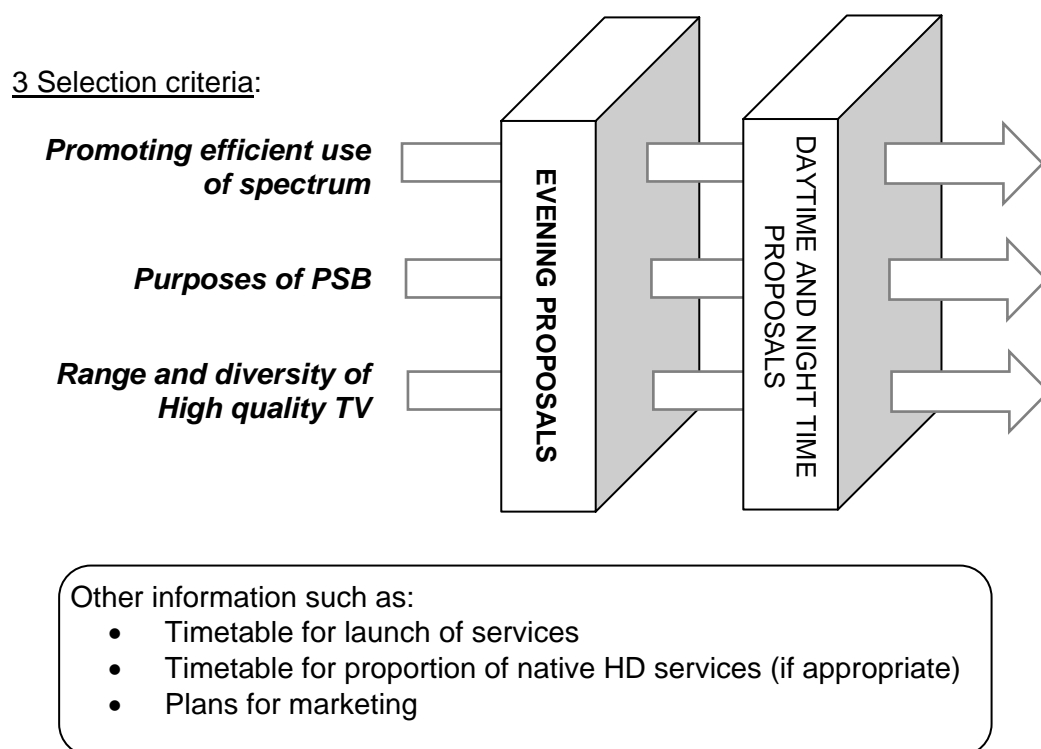
²⁵ <http://www.ofcom.org.uk/about/sdrp/>

- 4.30 In performing its duties, Ofcom is also required to have regard to a range of other considerations, as appear to it to be relevant in the circumstances. In this context, Ofcom considers that a number of such considerations are relevant, in particular the desirability of promoting the fulfilment of the purposes of PSB in the UK, and the desirability of encouraging investment and innovation in relevant markets. Ofcom must also have regard, in particular, to the interests of consumers in respect of choice, price, quality of service and value for money.
- 4.31 Ofcom has, however, a wide measure of discretion in balancing its statutory duties and objectives.

Framework for applications and relationship with selection criteria

- 4.32 Figure 2 below is intended to provide applicants with a high level view of how applications should be structured. Broadly, Ofcom expects an application to set out the Evening Hours and daytime/night time hours proposals, to explain how different aspects of these proposals will address the three selection criteria and then include various additional sources of information such as timetables for launch of services.

Figure 2: Application structure



Comparative selection assessment criteria

- 4.33 In addition to the above-mentioned general duties, the 2008 Order requires that Ofcom has regard in particular to the extent to which the services proposed to be provided by an applicant appear to Ofcom to further the objectives reflected in the three assessment criteria set out in paragraph 4.1 above.

- 4.34 Guidance is set out below in relation to each of the three assessment criteria so that applicants' attention may be drawn to certain matters that they are asked to demonstrate in their applications. In general, Ofcom places a high value on the use of the capacity on Multiplex B which will result from this process. Ofcom is therefore encouraging applicants to make applications to produce the highest value outcome for citizens and consumers – from both spectrum and PSB policy perspectives.

Selection Criterion 1: Promote the efficient use of the radio spectrum

- 4.35 This first criterion reflects Ofcom's prescribed statutory objective under section 3 of the 2003 Act to ensure the optimal use of spectrum. Specifically, applicants should demonstrate how their proposals are intended to promote the efficient use of the radio spectrum, paying particular regard to how the content proposed to be included in their services would be likely to encourage members of the public to adopt reception equipment which is compatible with the transmission and coding technologies specified by Ofcom pursuant to paragraphs 2.31 to 2.33 of this Notice.
- 4.36 Applicants should put forward proposals which are calculated to ensure that consumer reception equipment is made available as quickly as possible. This may include co-operating with other holders of reserved capacity once the determination has been made. Ofcom expects that this should be feasible in time for DSO in the Granada region in late 2009 and furthermore expects to capture the proposed timetable in any licence conditions placed upon a successful applicant (timetable commitments in licences will be subject to paragraph 2.27). Applicant's proposals should specifically address three key issues:
- 4.36.1 Proposals must demonstrate how the applicant plans to encourage manufacturers to build DVB-T2 and MPEG-4 consumer reception equipment (STBs and IDTVs) as quickly as possible, and to encourage retailers to offer them widely for sale.
- 4.36.2 Proposals must show how the applicant will market the new services so as to drive uptake of consumer reception equipment as quickly and widely as possible. Ofcom is specifically interested in broad financial commitments to marketing, a commitment to utilising existing branding and how the content proposed to be included in their proposals will encourage uptake of consumer equipment as widely and quickly as possible.
- 4.36.3 Proposals must also demonstrate applicants' robust plans to launch services as soon as possible (and should expect to launch for Granada DSO – i.e. late 2009, or if later than this provide strong reasons as to why this is not achievable).
- 4.37 Applicants must demonstrate how they will reduce any potential negative impacts on the DSO programme. In particular, they should specifically address the following two issues:
- 4.37.1 Proposals must demonstrate how the applicant will seek to reduce any potential consumer confusion relating to DSO and the availability of DVB-T services.
- 4.37.2 Proposals must explain how the applicant will ensure that the launch of the new services will avoid any negative impacts on the DSO programme.

- 4.38 In addition, if the capacity is used for HD, Ofcom expects that three such channels (two of which would be licensed and regulated by Ofcom with the third by the BBC Trust) could be offered initially (from late 2009), with four from late 2012 as the efficiency of compression technology improves over time. Applicants should explain how they will support the Multiplex B operator in migrating to capacity sufficient for 4 HD channels while also ensuring an acceptable level of service quality is maintained.
- 4.39 Successful applicants will each be granted capacity sufficient for the broadcasting of one HD service. Applicants must demonstrate how they propose to maximise utility of the capacity reserved throughout a complete 24 hour period – for example through scheduling, content sourcing and capacity sharing. Applicants should note that Ofcom is open to proposals that provide an innovative and flexible approach to the use of capacity. More information on this is given in paragraphs 4.50 to 4.65.
- 4.40 Applicants proposals should identify and discuss in their applications the types of content they propose to provide that will have the necessary popular appeal to promote uptake of consumer equipment. This discussion should include an explanation of how this relates to the specific advantages of the underlying service type that they propose to provide (for example, the higher picture quality of HD).
- 4.41 Ofcom would also welcome commitments using other mechanisms, such as defining a given amount of content on the reserved capacity to be used for premiering programmes using the reserved capacity to promote uptake of compatible equipment. Ofcom defines a ‘premiere’ here as a broadcast of an event that takes place ahead of transmission of the same event/content on any other UK terrestrial service or platform.

Selection criterion 2: Contribution to the fulfilment of the purposes and characteristics of public service television broadcasting in the British Islands

- 4.42 This second criterion reflects one of Ofcom’s principal duties, namely the desirability of promoting the fulfilment of the purposes of public service television broadcasting in the UK. Applicants should therefore demonstrate how their proposals will further this objective.
- 4.43 Specifically, applicants are expected to show the extent to which their proposals for broadcasting by means of the proposed capacity contribute to the fulfilment of the purposes of public service television broadcasting in the British Islands, having regard to the desirability of those purposes being fulfilled in a manner that is compatible with section 264(6) of the 2003 Act (read as if those services were relevant television services within the meaning of that section).
- 4.44 Therefore, it is necessary to have regard first to the meaning of the purposes of public service television broadcasting, which is set out in section 264(4) of the 2003 Act as follows:

“(4) The purposes of public service television broadcasting in the United Kingdom are—

(a) the provision of relevant television services which secure that programmes dealing with a wide range of subject-matters are made available for viewing;

(b) the provision of relevant television services in a manner which (having regard to the days on which they are shown and the times of

day at which they are shown) is likely to meet the needs and satisfy the interests of as many different audiences as practicable;

(c) the provision of relevant television services which (taken together and having regard to the same matters) are properly balanced, so far as their nature and subject-matters are concerned, for meeting the needs and satisfying the interests of the available audiences; and

(d) the provision of relevant television services which (taken together) maintain high general standards with respect to the programmes included in them, and, in particular with respect to—

(i) the contents of the programmes;

(ii) the quality of the programme making; and

(iii) the professional skill and editorial integrity applied in the making of the programmes.”

4.45 As regards the desirability of those purposes being fulfilled in a manner that is compatible with section 264(6) of the 2003 Act, that subsection provides as follows:

“(6) A manner of fulfilling the purposes of public service television broadcasting in the United Kingdom is compatible with this subsection if it ensures—

(a) that the relevant television services (taken together) comprise a public service for the dissemination of information and for the provision of education and entertainment;

(b) that cultural activity in the United Kingdom, and its diversity, are reflected, supported and stimulated by the representation in those services (taken together) of drama, comedy and music, by the inclusion of feature films in those services and by the treatment of other visual and performing arts;

(c) that those services (taken together) provide, to the extent that is appropriate for facilitating civic understanding and fair and well-informed debate on news and current affairs, a comprehensive and authoritative coverage of news and current affairs in, and in the different parts of, the United Kingdom and from around the world;

(d) that those services (taken together) satisfy a wide range of different sporting and other leisure interests;

(e) that those services (taken together) include what appears to OFCOM to be a suitable quantity and range of programmes on educational matters, of programmes of an educational nature and of other programmes of educative value;

(f) that those services (taken together) include what appears to OFCOM to be a suitable quantity and range of programmes dealing with each of the following, science, religion and other

beliefs, social issues, matters of international significance or interest and matters of specialist interest;

(g) that the programmes included in those services that deal with religion and other beliefs include—

(i) programmes providing news and other information about different religions and other beliefs;

(ii) programmes about the history of different religions and other beliefs; and

(iii) programmes showing acts of worship and other ceremonies and practices (including some showing acts of worship and other ceremonies in their entirety);

(h) that those services (taken together) include what appears to OFCOM to be a suitable quantity and range of high quality and original programmes for children and young people;

(i) that those services (taken together) include what appears to OFCOM to be a sufficient quantity of programmes that reflect the lives and concerns of different communities and cultural interests and traditions within the United Kingdom, and locally in different parts of the United Kingdom;

(j) that those services (taken together), so far as they include programmes made in the United Kingdom, include what appears to OFCOM to be an appropriate range and proportion of programmes made outside the M25 area.”

4.46 In light of the above, it is to be noted that the purposes and characteristics of PSB were set out in Ofcom’s Review of Public Service Broadcasting²⁶ and confirmed in the ongoing second review:

Purposes of PSB:

- to inform ourselves and others and to increase our understanding of the world through news, information and analysis of current events and ideas;
- to stimulate our interest in and knowledge of arts, science, history and other topics through content that is accessible and can encourage informal learning;
- to reflect and strengthen our cultural identity through original programming at UK, national and regional level, on occasion bringing audiences together for shared experiences; and
- to make us aware of different cultures and alternative viewpoints, through programmes that reflect the lives of other people and other communities, both within the UK and elsewhere.

Characteristics of PSB:

- **high quality** – well-funded and well-produced;

²⁶ PSB Purposes and Characteristics are set out in Ofcom’s PSB Review Phase 2, page 6:
http://www.ofcom.org.uk/consult/condocs/psb2/psb2/psb_phase2.pdf

- **original** – new UK content, rather than repeats or acquisitions;
- **innovative** – breaking new ideas or re-inventing exciting approaches, rather than copying old ones;
- **challenging** – making viewers think;
- **engaging** – remaining accessible and enjoyed by viewers; and
- **widely available** – if content is publicly funded, a large majority of citizens need to be given the chance to watch it.

4.47 Applicants should also explain how they might leverage the specific advantages of the underlying service type they propose to provide (for example, higher picture quality of HD if that is the underlying service type) across the PSB purposes and characteristics. For example, this might be through focusing on those types of PSB content that benefit most from the service type they propose to provide.

Selection criterion 3: Contribution to enhancing or maintaining the range and diversity of high quality television services available on digital terrestrial television

4.48 This third criterion reflects Ofcom's prescribed statutory objective under section 3 of the 2003 Act to secure the availability of a wide range of television and radio services of high quality and wide appeal throughout the UK. Applicants should therefore demonstrate how their proposals will further this objective, particularly the extent to which their proposals contribute to enhancing or maintaining the range and diversity of high quality television services available on DTT, as provided in the 2008 Order.

4.49 To satisfy this criterion, applicants may use the following guidance when preparing their applications:

- 4.49.1 In light of Ofcom's duty to have regard to the quality of the television services provided, Ofcom considers that it is important to ensure that the long term aim of applicants wishing to provide HD services should be to provide all HD programming in full, native HD format, rather than up-converted from SD format – which is generally acknowledged to provide lower picture quality. Applicants wishing to provide HD services must provide us with a timetable containing the proportion or quantity of content that will be native HD and how this will increase over time.

Nature of services to be broadcast

4.50 The following paragraphs (in accordance with article 3(3)(d)(i) of the 2008 Order) are intended to provide applicants with details, as appropriate, as to the nature of the services which should be broadcast by means of digital capacity reserved on Multiplex B. The following paragraphs should therefore be carefully considered by applicants as they contain important information which should assist them in the completion of their application.

4.51 Ofcom expects applicants to describe an Evening Hours proposal consisting of a proposal that they believe makes best use of the capacity proposed to be reserved.

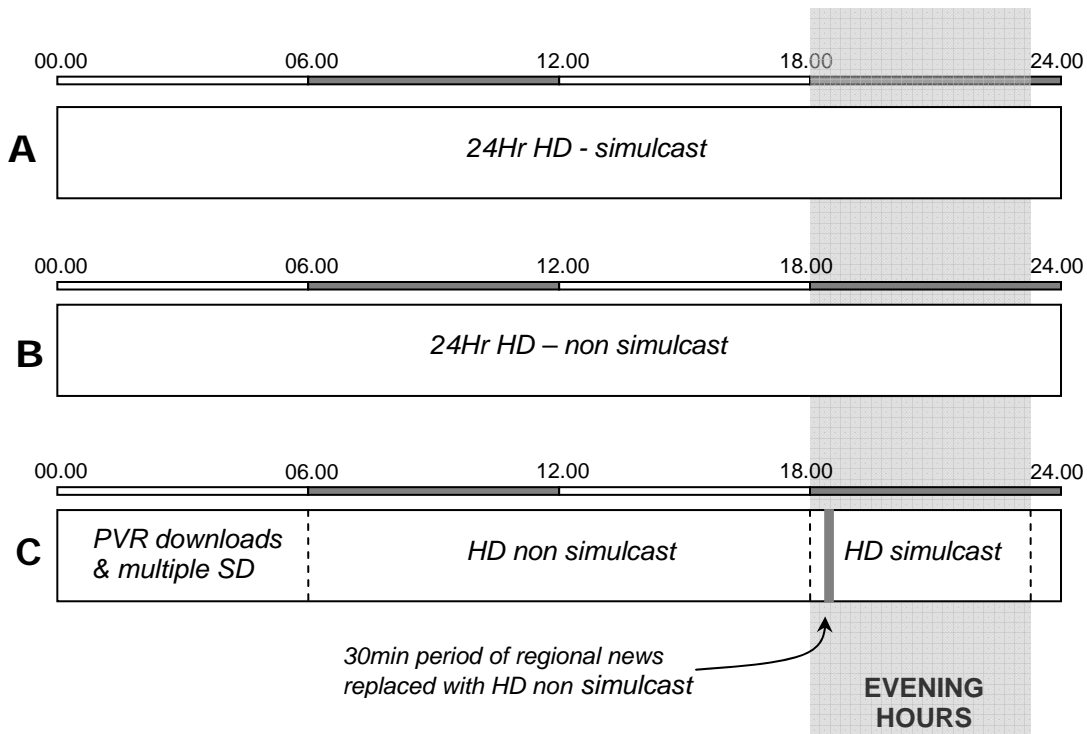
4.52 The Evening Hours proposal will be considered by the Committee as a key element of the applicant's overall proposal. The Evening Hours proposal should therefore address the criteria specified in the 2008 Order (which are discussed in more detail previously in this Section). It is Ofcom's intention that the Evening Hours proposal will be captured as a core commitment in any licence variation or grant that Ofcom

makes to the successful applicant. Subletting of capacity to other parties (as detailed in paragraphs 5.44 to 5.46) will not be allowed during the Evening Hours.

- 4.53 Applicants should also set out the services they intend to provide outside the Evening Hours proposal, i.e. their daytime and night time proposals. Ofcom does not necessarily expect these to be similar in character to the Evening Hours proposal. Indeed, a degree of innovation and creative use of this capacity would be acceptable and proposals that address this, while also making efficient use of the capacity, would be welcomed.
- 4.54 Services such as multiple SD streams, overnight PVR downloads or capacity subletting are also acceptable. Ofcom can confirm that subletting will be allowed outside the Evening Hours but any use of the reserved capacity by a broadcaster other than the licensee holder will require Ofcom's prior written consent. Applicants are also reminded that the entirety of proposals must be free to view and therefore that no pay services will be allowed.
- 4.55 Applicants should also be aware that the carriage of alternative services might impact on the costs to the Multiplex B operator and thus impact the carriage costs payable. Applicants must also be aware of the need to work constructively with the holder of the Multiplex B licence to ensure that, if different services are proposed to be carried on that Multiplex, they do not impact on the quality and reliability of other services being carried.
- 4.56 When setting out their non-Evening Hours proposals, applicants should consider those aspects they view as commitments and those they view as aspirations. Applicants should note that the Committee will add more weight in its consideration of proposals which include such commitments. It is Ofcom's intention that, where appropriate, commitments for daytime and night time hours proposals will be captured in licence conditions as obligations that applicants must provide.
- 4.57 Regarding any commitments made for either Evening Hours or daytime/night time hours proposals, applicants must provide sufficient detail for Ofcom to be able to capture these commitments in a licence obligation. For straight simulcast proposals, the obligation is likely to be straightforward as it is a reflection of the DRL commitments. However, for non-simulcast commitments, Ofcom requires that applicants provide details such as the type of programming, how much of it will be provided and when this will occur. For Evening Hours proposals that are non-simulcast, applicants must provide this level of detail. For daytime /night time hours proposals that are non-simulcast, applicants may choose to provide less detail although in doing so they will limit the extent of the commitments that Ofcom are able to capture as obligations and the Committee is likely to place less weight on that portion of the applicant's proposal. Applicants' attention is drawn to the use of reserved capacity not captured by commitments as detailed in paragraphs 5.44 to 5.46.
- 4.58 As noted above, the Committee in making its determination will place greater weight on those aspects of a proposal that may be captured as licence obligations. Applicants should note the detail on assessment process and how the Committee will consider Evening Hours and daytime and night time hours proposals described earlier in this Section and, in particular, paragraph 4.13.
- 4.59 To assist applicants with their applications, Ofcom has set out in Figure 3 below three examples of possible submission types and how they might be licensed. Applicants

should not interpret these examples as being in any way indicative as to the types of proposal Ofcom consider likely to be successful.

Figure 3: Examples of possible proposals



- 4.60 The first example 'A' is a proposal consisting of a straight HD simulcast of an existing 24 hour service currently licensed under a DRL. Here the proposal would most likely be captured through a variation to the existing DRL as explained in Section 5 of this Notice in more detail.
- 4.61 In example 'B', the proposal consists of a 24 hour HD service which is not a simulcast of an existing DRL service. The various aspects of this proposal may be captured in a Public Service DTSPS licence. A discussion of the differences between this licence and a standard DTSPS is included in Section 5.
- 4.62 Finally, example 'C' illustrates a proposal involving a variety of services. Firstly, within the Evening Hours (18.00 to 23.00), a HD simulcast is proposed. However, here the simulcast source has a 30 minute regional news segment. This would be replaced with non simulcast HD content. Between 06.00 and 18.00 a 12 hour segment of non simulcast HD service is proposed and between 23.00 and 06.00 a mixture of multiple SD streams (possibly leased) and PVR downloads.
- 4.63 In that example, the use of the digital capacity reserved on Multiplex B for the broadcasting of services provided by the applicant would likely be authorised by grant of a Public Service DTSPS licence, which would also contain the commitments for the Evening Hours slot between 18.00 and 23.00 and the daytime slot between 06.00 and 18.00. The Public Service DTSPS licence would also hold the licensee's right to use the capacity between 23.00 and 06.00 (i.e. it grants access to the capacity for the full 24 hours). However, it might not contain any commitments in this period as subletting is not included as a commitment or services might be licensed under a DTAS licence. The conditions for subletting of reserved capacity and later

use of capacity by the successful applicant are discussed further in paragraphs 5.44 to 5.46.

- 4.64 For clarity, in the above examples, the subletting of capacity would only be allowed in the 23.00 to 06.00 slot in example 'C'. In all other instances ('A', 'B' and the other times of 'C'), the reserved capacity will have licensing commitments attached to it and it will therefore not be allowed to be sublet. More detail on subletting arrangements is provided in Section 5 from paragraph 5.44.
- 4.65 Applicants are also reminded that their proposals along with their future use of the reserved capacity must comply with the current limits on the percentage of capacity that must be made available for the carriage of programme and Qualifying Services as described in section 12(1)(h) of the 1996 Act. This will remain the case while this provision remains in force.

Content aggregating proposals

- 4.66 As a general rule, proposals that comprise a substantial proportion of content from other Qualifying Services will not be allowed. For example, Channel 4 Corporation may not submit an application containing substantial content from (say) the Channel 5 service.
- 4.67 The exception to this rule is S4C and the public teletext provider who may submit an application that contains substantial content from another Qualifying Service. For example, S4C may submit an application that contained substantial content from Channel 5.
- 4.68 Equally, any of the Qualifying Services may submit an application containing substantial content from S4C or public teletext. An example here would be that (say) Channel 5 may submit an application through partnership with either public teletext or S4C (or both). The Channel 5 application in this instance would still be for a single 24Hr slot that Channel 5 would be responsible for, but that capacity for a portion of the 24 hours day, or a smaller portion of that capacity for some or all of the time, would be used to provide content from public teletext and/or from S4C.
- 4.69 There is also an exception for the Channel 3 licensees who may only apply when making an application on behalf of at least 13 regional Channel 3 licences. Thus, their proposals are also exempt from paragraph 4.66 when they are carrying content from other Channel 3 licences.
- 4.70 Ofcom will also allow any of the Relevant PSBs to submit a proposal that contains content from a third party source (i.e not from a Relevant PSB). An applicant may enter into agreements to supply content from a non-Qualifying Service, but should they be successful in their application, capacity will only be reserved for the Relevant PSB and any obligations on it will be the sole responsibility of that PSB.

Section 5

Licensing information for applicants

Introduction

- 5.1 The assessment process described in Section 4 of this Notice makes it clear that the Committee's main decision will, as required under the terms of the 2008 Order, be one of the following:
- The Committee decides to make a determination reserving some or all of the capacity proposed under this Notice.
 - The Committee decides to make no determination to reserve such capacity, or to make a determination reserving less digital capacity than is proposed.
- 5.2 Paragraph 4.17 of this Notice explains that, where the Committee makes a determination to reserve some or all of the proposed digital capacity, one of the things Ofcom must do, as soon as reasonably practicable after making its determination, is to grant to each applicant for whom such capacity has been reserved a Public Service DTPS licence in respect of the services it proposes to provide, except in the case of any proposed service that appears to Ofcom to be equivalent to a Qualifying Service or a DTAS.
- 5.3 This Section therefore provides details of how Ofcom expects to deal with such content licensing matters, which applicants should take into account in applying for capacity proposed to be reserved under this Notice. That information includes the terms and conditions that Ofcom proposes should apply to services provided by Relevant PSBs for broadcasting by means of digital capacity reserved on Multiplex B under this Notice, whether they are to be licensable as a Public Service DTPS or they appear to Ofcom to be a Qualifying Service (or DTAS).
- 5.4 Details are also provided in this Section of Ofcom's expected variations to the relevant Multiplex licences:
- firstly, to secure that the holder of the Multiplex B licence will use reserved digital capacity for the broadcasting of services provided by the broadcaster(s) for whom it has been reserved; and
 - secondly, to secure that existing services on Multiplex B, Multiplex 2²⁷ and Multiplex A²⁸ are moved around so as to ensure that the reorganisation as described in the April 2008 Statement for the purposes of reserving capacity proposed in this Notice is put into effect, as provided for in the 2008 Order.

²⁷ This means the television multiplex service which, on the day the 2008 Order is made, Digital 3 and 4 Limited is authorised to provide by virtue of the licence to that effect (the "**Multiplex 2 licence**") granted under Part 1 of the 1996 Act by the Independent Television Commission on 19th December 1997, which licence is available at: <http://www.ofcom.org.uk/tv/ifi/tvlicensing/muxlicensees/d34m/>

²⁸ This means the television multiplex service which, on the day the 2008 Order is made, SDN Limited is authorised to provide by virtue of the licence to that effect (the "**Multiplex A licence**") granted under Part 1 of the 1996 Act by the Independent Television Commission on 26th May 1998, which licence is available at: <http://www.ofcom.org.uk/tv/ifi/tvlicensing/muxlicensees/ma/>

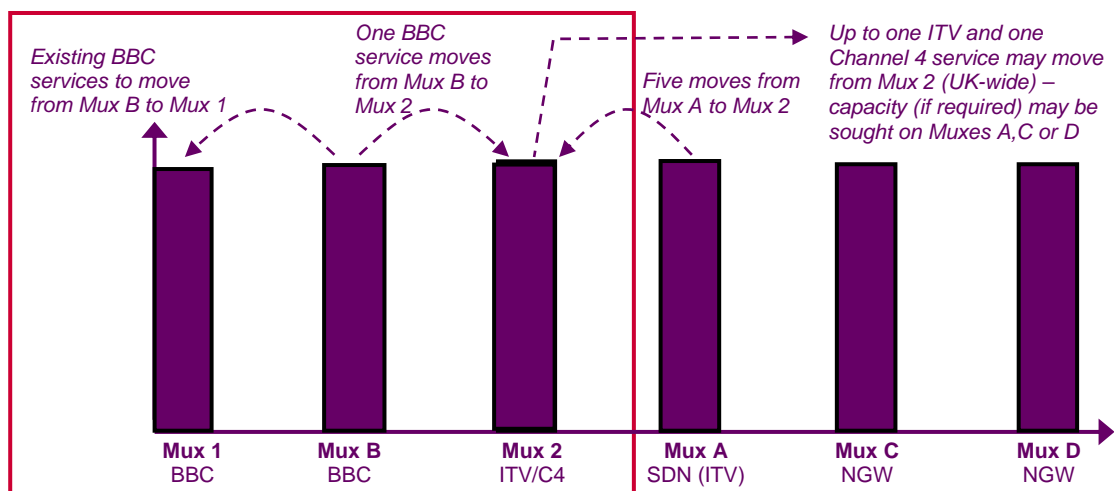
5.5 A summary of that reorganisation is first set out below as its implementation is a condition precedent to the entire process and outcome under this Notice, which matter is also linked to time-scales concerning licensing matters.

Condition precedent

5.6 The reorganisation of existing services on Multiplex B, Multiplex 2 and Multiplex A must take place before any reserved capacity can be used by successful applicants.

5.7 The expected movement of services in the reorganisation is illustrated in Figure 4 below.

Figure 4: Reorganisation of services



5.8 For a fuller discussion of that reorganisation, applicants are referred to the April 2008 Statement.

5.9 The reorganisation of services on Multiplex B will only proceed if the Committee decides to make a determination in accordance with the 2008 Order to reserve all of the capacity proposed under this Notice. Should it make such a determination be made, the main steps envisaged by Ofcom are as follows:

- **Step 1 (reservation):** The Committee decides to make a determination reserving all of the capacity proposed under this Notice or, as the case may be, under another similar statutory notice (see further at paragraph 4.21 and more generally in Section 4 as to the provisional timetable for this reservation).
- **Step 2 (announcement & content licensing):** As soon as reasonably practicable after making such determination, Ofcom will:
 - publish, in such manner as Ofcom considers appropriate, the name of each applicant for whom such capacity is to be reserved, and such other information as Ofcom considers appropriate;
 - grant to each applicant for whom such capacity is to be reserved a Public Service DTSPS licence in respect of the services it proposes to provide, except in the case of any proposed service that appears to Ofcom to be:
 - equivalent to a Qualifying Service (in which case Ofcom will vary the applicant's DRL); or

- a DTAS (in which case Ofcom will grant a DTAS licence, if needed).
 - **Step 3 (Multiplex B):** Provided that the Committee has made a determination reserving all of the capacity proposed under this Notice (i.e. capacity sufficient for two HD services), Ofcom will vary the Multiplex B licence, in accordance with the provisions of article 4 of the 2008 Order, within 12 months of the date on which the Committee has made such a determination²⁹.
 - **Step 4 (Multiplexes 2 & A):** If, but only if, the Committee reserves digital capacity on Multiplex B (and variations to the Multiplex B licences are then made under article 4 of the 2008 Order), Ofcom must also make consequential variations to both the Multiplex 2 licence as well as the Multiplex A licence in accordance with articles 8, 9 and 10 of the 2008 Order.
- 5.10 The amount of time needed by Ofcom to achieve any of above-mentioned steps will depend on the circumstances pertaining at the time each step has to be taken. For instance, the proposals of the successful applicant may raise issues which need to be resolved prior to making the necessary variations to any DRL or granting any Public Service DTSPS licence in which case this is expected to lengthen the period within which the relevant steps can be taken. Furthermore, licensing process issues such as the final wording of licences will need to be discussed with successful applicants along with the finalising of the technical requirements for the Multiplex B licence³⁰. Subject to considering such proposals (and assuming that the Committee would decide to make a determination reserving all of the capacity proposed under this Notice by end of September 2008), Ofcom is, at present, hoping to complete this licensing process by the end of 2008, i.e. within 3 months of such determination.

Terms and conditions in relation to services using reserved capacity

Provisions of the Multiplex B licence

Securing the use of reserved capacity and carriage fees

- 5.11 While the Committee would make a determination to reserve capacity (and publish the name of each applicant for whom such capacity is to be reserved), the reservation itself will only take effect by means of Ofcom varying the Multiplex B licence to secure (and therefore require) that the holder of the Multiplex B licence will use reserved digital capacity for the broadcasting of services provided by the broadcaster(s) for whom it has been reserved.
- 5.12 In consideration for using such reserved capacity for these purposes, the holder of the Multiplex B licence will receive such payments (i.e. carriage fees) as are from time to time agreed between the holder and the broadcaster or, in default of agreement, as are determined by Ofcom. (The subsection beginning at paragraph 5.79 below deals specifically with variations to the Multiplex B licence to secure those matters, including the need to capture the carriage of the new services and removal of existing services.)

²⁹ Article 4(6) of the 2008 Order makes provision for a different timescale if the Committee would decide to make a determination reserving only *some* of the capacity proposed under this Notice.

³⁰ Ofcom is currently in the process of preparing initial draft versions of the terms to be included in licences, particularly for Multiplex B and the Public Service DTSPS licence. Should applicants wish to obtain copies of Ofcom's emerging views on the appropriate wording of such terms, they should contact Chris Adams at Ofcom (e-mail: chris.adams@ofcom.org.uk).

- 5.13 Variations to the Multiplex B licence will also be made to reflect other rights and obligations attached to the reserved capacity. Accordingly, Ofcom proposes to capture those matters as set out, in summary, below.

“Sufficient” and residual capacity

- 5.14 The first issue concerns the total amount of digital capacity reserved.
- 5.15 In relation to capacity proposed to be reserved under this Notice, the Multiplex B licence will be varied to secure that the holder of the Multiplex B licence is only required to use sufficient capacity for the broadcasting of one HD service in relation to each successful PSB’s application (see Section 2 of this Notice as to the application requirement per proposed capacity). The reservation of digital capacity for any person of such application is, however, for use for the broadcasting of services provided by³¹ that person.
- 5.16 According to article 2(3)(c) of the 2008 Order, “sufficient” capacity means “the reservation of such digital capacity as is *from time to time* sufficient for the broadcasting of a number of HD (or as the case may be) SD services”. Furthermore, in calculating the amount of that capacity, particular regard is to be had to the amount of capacity actually being used by the holder of the Multiplex B licence for broadcasting HD (or SD) services on unreserved capacity when assessing how much reserved capacity is “sufficient” for these purposes; see article 13 of the 2008 Order.
- 5.17 Applicants should note that, in accordance with article 12 of the 2008 Order, the holder of the Multiplex B licence may use any capacity not reserved under the terms of the 2008 Order as it sees fit, subject to the terms of the licence. Applicants should also be aware that the specific amount of capacity so reserved by Ofcom under the terms of the 2008 Order will be subject to variation in accordance with the process outlined in paragraph 2.17 whereby Ofcom can vary the capacity reserved to match that which it considers is from time to time sufficient for the broadcasting of one HD service.
- 5.18 However, it should also be noted that the right to such residual capacity by the holder of the Multiplex B licence is subject to any future determination by Ofcom to reserve capacity sufficient for the broadcasting of a third HD service. That situation may be brought about, for example, through improvements in compression technology.
- 5.19 In addition to the parties’ right to refer to Ofcom disputes about carriage fees in default of agreement (see paragraph 5.12 above), the Multiplex B licence will be varied to permit that either an applicant who has been reserved capacity or the holder of the Multiplex B licence (or both) to seek a determination from Ofcom on the question of the amount of digital capacity which is sufficient for the broadcasting of two, or as the case may be, three HD services. In this context, Ofcom strongly urges parties to ensure that the contractual arrangements themselves between them enables each party to refer to Ofcom for determination any potential dispute arising in relation to carriage fees and anything affecting the amount of capacity, such as where Ofcom decides to reserve capacity sufficient for the broadcasting of a third HD service.

³¹ The meaning of “provided by” is to be construed in accordance with section 362(2) and (3) of the 2003 Act.

Carriage fees

- 5.20 Successful applicants will need to negotiate carriage terms with the Multiplex B licence holder (BBC Free to View Ltd) on a fair, reasonable and non-discriminatory (FRND) basis and at rates which reflect market terms. In the event of a dispute over the cost of carriage, the matter may be referred to Ofcom for resolution under the terms of the 2008 Order. However, prior to accepting a referral, Ofcom will request evidence of any negotiations between the parties with a view to reasonably attempt to settle the matter. If Ofcom is satisfied that such an attempt has been made, it would not expect to set a price that is below the appropriate share of costs reasonably incurred by the BBC, as Multiplex B operator, in carrying the relevant services.
- 5.21 From time to time, the capacity required for carrying a single HD service on Multiplex B may reduce as compression technologies mature. When this happens, the digital capacity reserved for each successful applicant on Multiplex B will also be reduced. Ofcom would therefore expect the commercially agreed carriage terms to be subject to contractual adjustment should reductions in allocated capacity on Multiplex B be imposed.

Effective date of reserved capacity

- 5.22 Ofcom also proposes that any reservation of digital capacity on Multiplex B should take effect from dates to be specified in the Multiplex B licence, with this capacity becoming available as DSO rolls out across the UK regionally, and being nationally available when DSO is completed in 2012. Ofcom considers it likely that the effective date will be on or about 1 November 2009 (see paragraph 2.24).

Coverage period and area

- 5.23 Capacity will be reserved for a 24 hour period throughout the whole of the coverage area achieved by the Multiplex B service, although the Relevant PSB will not necessarily be obliged to broadcast its service for the whole of the 24 hour period.

Prohibition on restriction of use of reserved capacity

- 5.24 In this context, it should be noted that the holder of the Multiplex B licence is, pursuant to Condition 11(3) of the licence (as imposed under section 12(1)(f) of the 1996 Act), prohibited in any agreement with a DTPS, DTAS or digital sound programme service provider which entitles that person to use a specified amount of digital capacity on the multiplex, from restricting that person's freedom to make arrangements with some other person as to the use of any of that digital capacity. (The prohibition does not apply, however, if such a restriction is reasonably required for ensuring the technical quality of the broadcasts or for securing compliance with any condition of the licence.) That prohibition will continue to apply to the holder of the Multiplex B licence when it enters into an agreement with a Relevant PSB to whom Ofcom has reserved capacity under this Notice.

Free to air requirement

- 5.25 Further, the Multiplex B licence will be varied to ensure that the technologically upgraded capacity is used so as to be available for reception by members of the public on a free to air basis.

Duration of reserved capacity

- 5.26 There are a number of situations where Ofcom may terminate the reservation of capacity on Multiplex B. Further details on the situations raised here may be found between paragraphs 5.31 to 5.53.
- 5.27 Capacity will remain reserved only for so long as the person to whom it is being reserved remains a Relevant PSB. Ofcom may also terminate the reservation of capacity if it is satisfied that the licensee fails to provide the services proposed in its application covering i) Evening Hours, ii) commitments in day time or night time periods or if they use remaining capacity (i.e. not covered by i) or ii)) without first obtaining Ofcom's written consent. Ofcom may also terminate the reservation of capacity if it finds that an application contained false or misleading information.
- 5.28 In the case of capacity reserved for the holder of a Channel 3 licence, Ofcom may terminate the reservation of capacity (and if appropriate vary Multiplex B accordingly) if it appears to Ofcom that the service or services authorised to be broadcast by means of that reserved capacity are no longer being provided on behalf of at least 13 holders of regional Channel 3 licences. In such circumstance, Ofcom would first give each holder of a Channel 3 licence on whose behalf of the service or services is or are being provided and the Multiplex B operator a reasonable opportunity to make representations about the matter.
- 5.29 Should Ofcom decide to terminate reserved capacity on Multiplex B, it reserves the right to make such capacity subject to another reservation and thus publish a further statutory notice inviting applications under the terms of the 2008 Order.
- 5.30 Applicants should note that the right to capacity on Multiplex B will be added as a right which is conferred by the holding of that DRL and therefore will be accounted for in the periodic review of fees payable by the licensee. For Channel 3 licence holders, this will apply to all DRL licence holders who are part of any successful application. Details of application conditions for Channel 3 licences are given in Section 3.

Provisions of the content licences

- 5.31 In accordance with article 3(3)(d)(ii) of the 2008 Order, Ofcom sets out below the terms and conditions it proposes should apply in relation to services provided by Relevant PSBs for broadcasting by means of reserved capacity.

Compliance with Proposals

- 5.32 Any capacity reserved on Multiplex B to a Relevant PSB under a Public Service DTSP or DRL will include a condition which requires that licensee to supply the new service(s) to the Multiplex B operator in accordance with the proposals put forward in their successful application under this Notice. Ofcom is currently working to include the commitments made in these proposals as an Annex to the licence granted or amended (as appropriate) by Ofcom for the above mentioned reserved capacity.
- 5.33 Where capacity is reserved for the provision of a DTAS on Multiplex B, the proposals for that service may also be included in the Annex to that licence if Ofcom deems that they are an essential element of the proposals.
- 5.34 Compliance with any such condition will be a requirement of the licence.

- 5.35 Section 4 provides further details of the content of such proposals, including the nature of any service to be broadcast, and the requirements to comply with requisite timetables for launch of the new services and to promote the new service including communications with viewers.

Expiry or other termination of the Multiplex B licence

- 5.36 Applicants' attention is drawn to the fact that any capacity reserved by Ofcom to Relevant PSBs under the Multiplex B licence as a result of this Notice will at all times be subject to the terms and conditions (including duration) of the Multiplex B licence itself, the compliance of which is the responsibility of the holder of the Multiplex B licence.
- 5.37 The use and entitlement to any reserved capacity may therefore be affected or terminated as a result of those terms and conditions, such as upon any revocation of the Multiplex B licence (including, without limitation, if Ofcom were to revoke the assignment of the frequencies on which the Multiplex B service is from time to time being provided on the grounds set out in the licence).

Possible forthcoming changes arising from existing or new legislation or PSB Review

- 5.38 Applicants' attention is also drawn to such reserved capacity being subject to any changes which might result from any future review of the communications legislation³² (including the 2003 Act, the Broadcasting Acts and the Wireless Telegraphy Act 2006), changes to EU legislation, as well as any future reviews based on proposals made in Ofcom's Second Public Service Broadcasting Review³³. This may include decisions affecting PSB in the UK, including the licensing regime.
- 5.39 In addition, applicants should take account of the possibility in the future that the Government could decide to exercise its existing powers (with or without such new legislation) under the relevant enactments, which could affect (directly or indirectly) any capacity reserved by Ofcom. Such powers are available under various provisions, including (without limitation) its order-making powers under section 243 of the 2003 Act.
- 5.40 Ofcom cannot give any assurance to applicants as to the extent to which (if any) any legislative or regulatory developments may impact in the future on any reserved capacity or on the holding, variation, or revocation of Broadcasting Act licences.

Continued holding of DRL

- 5.41 In any event, the use and continued entitlement to any such capacity will be conditional on the Relevant PSB to whom Ofcom has reserved capacity continuing to hold its DRL such that the Relevant PSB will cease to have digital capacity on Multiplex B reserved for it upon that Relevant PSB no longer holding its existing DRL.

³² Such legislative proposals may be introduced by the Government following developments such as the EU Review of the 2002 Regulatory Framework for Electronic Communications and Services: see, for example, the website of the Department for Business, Enterprise and Regulatory Reform (BERR) at <http://www.berr.gov.uk>, together with other possible Government policies and initiatives on digital broadcasting, see, in particular, any announcements made from time to time by the Department for Culture, Media and Sport: <http://www.culture.gov.uk> as well as by Ofcom.

³³ A consultation of Phase One of Ofcom's Second Public Service Broadcasting Review was published on 10 April 2008: see http://www.ofcom.org.uk/tv/psb_review/.

False or misleading information

- 5.42 As noted in paragraph 5.27 if Ofcom is satisfied at any time after making a determination to reserve capacity (including after granting or varying any licence) that the Relevant PSB to whom Ofcom has reserved capacity on Multiplex B provided information in connection with its application which was false in any material particular (whether the applicant knew it to be false or was reckless as to whether or not it was false), or an applicant withheld material information knowingly or recklessly, Ofcom may serve a notice revoking the licence in question. Ofcom intends therefore make provision for such revocation in the Public Service DTSPS licence or relevant DRL(s).

Failure by applicant to comply with licence obligations

- 5.43 As noted in paragraph 5.27 Ofcom will capture the commitments made in a successful applicant's proposal as licence obligations. If Ofcom is satisfied that a successful Relevant PSB has failed to comply with these obligations or is otherwise found to be in breach of any of the additional terms and conditions of the licence given effect under the terms of the 2008 Order, it will be subject to the enforcement provisions and/or sanctions for non-compliance as outlined in its licence, and this may result in steps taken by Ofcom to revoke the licence in question.

Prohibition on transferability of reserved capacity

- 5.44 As noted in paragraphs 4.50 to 4.65, Ofcom will require through licence obligations the supply of services in respect of an applicant's Evening Hours proposal and, where applicable, daytime and night time hours proposals. This will be either as an amendment to their existing DRL or in the form of a Public Service DTSPS licence. Ofcom will expect that any additional services that are to be provided by the successful applicant at a later date will similarly be captured as a variation to that licence (see paragraphs 5.48 to 5.50 below for further details)
- 5.45 Any capacity reserved under this Notice to a successful applicant is not permitted to be transferred to another person, including a subsidiary. However, the successful applicant will be free to make arrangements with another person as to the use of any of that capacity, so long as these arrangements do not include subletting of the capacity which forms part of the Evening Hours Proposal (that is, services broadcast between 18.00 and 23.00) or subletting of capacity that forms part of commitments that have been captured within a DRL or Public Service DTSPS within any part of the remaining period.
- 5.46 Any arrangements for subletting of capacity are also subject to the successful applicant obtaining Ofcom's prior written consent. In particular, as the reserved capacity is being provided on a PSB multiplex, Ofcom will need to be satisfied that, in particular, the proposed use of the leased capacity does not unduly detract from public service broadcasting purposes. Specifically, the use of any leased capacity must meet at least one of the purposes set out in section 264(4) of the 2003 Act (read as if those services were relevant television services within the meaning of that section). Furthermore, the recipient of the leased capacity will still be required to obtain a DTSPS or DTAS licence from Ofcom (subject to Ofcom's standard licensing application process).

Released reserved capacity

- 5.47 Should any capacity reserved under the terms of the 2008 Order be released or returned voluntarily or otherwise to Ofcom (including where Ofcom has revoked a licence, or a Relevant PSB ceases to hold a DRL or to remain a PSB), Ofcom may seek to reallocate the capacity as provided for by the 2008 Order. In doing so, Ofcom will also have regard to any additional matters it considers to be relevant including any changes to legislation and the outcome of the Second PSB Review.

Variation of obligations within DRL or Public Service DTSP licence

- 5.48 The basis for granting a successful applicant either a Public Service DTSP licence or variations to his existing DRL is explained below in the subsection beginning at paragraph 5.54. The scope for variation of obligations is directly connected to the licensing route Ofcom takes.
- 5.49 In all cases, when considering any requests for any variation of obligations, Ofcom will have regard to ensuring that any such requests for variations do not unduly diminish the original proposal and its ability to fulfil the selection criteria as set out in Section 4 of this Notice. However, Ofcom recognises that this is a new and emerging market area and notes that it may evolve rapidly over the coming years and will take this into account when considering any such requests for variation.
- 5.50 Where the service is licensable under a Public DTSP licence and its holder applies for a variation, Ofcom must pursuant to article 7(3) of the 2008 Order grant the application unless it appears to Ofcom that, if the application were granted, the capacity of the Public DTSP provided under it (or any DTAS associated with it) to further the objectives mentioned in article 3(8) of the 2008 Order would be unduly diminished.

Carriage fees

- 5.51 Successful applicants will need to negotiate carriage fees with the Multiplex B operator and, in default of agreement, determined by Ofcom. This specific matter will be regulated under the terms of the Multiplex B licence: see paragraph 5.20 above.
- 5.52 As already noted in paragraph 5.21 above, the capacity required for carrying a single HD service on Multiplex B may from time to time reduce as compression technologies mature. When this happens the digital capacity reserved for each successful applicant on Multiplex B will also be reduced. Ofcom would therefore expect commercially agreed carriage terms to be subject to contractual adjustment should reductions in allocated capacity on Multiplex B be imposed. The parties are therefore urged to ensure that such a mechanism is included in the agreement between them.

Cooperation with Multiplex B licence holder on certain obligations

- 5.53 The introduction of the services to be carried on the upgraded Multiplex B is likely to be a complex task. Ofcom therefore expects that the implementation of the necessary changes will require the full cooperation of all participants. It will therefore require that the successful applicants with reserved capacity will take all reasonable steps to enable the holder of the Multiplex B licence to meet its licence obligations regarding the adoption of the new technologies and the associated timetable as laid down in its licence.

Guidance on which content licence may be appropriate

- 5.54 It is clear from paragraph 5.2 above and article 3(9)(b) of the 2008 Order that Ofcom has the following options for allowing a successful applicant to be authorised for the broadcasting of services provided by that broadcaster using capacity reserved to him, namely:
- grant of a Public Service DTPS licence;
 - variations to his DRL licence, in the case of any proposed service that appears to Ofcom to be equivalent to a Qualifying Service; or
 - grant of a DTAS licence.
- 5.55 Ofcom will decide which route is the most appropriate way of proceeding based upon the proposals of the successful applications. In this regard, it is to be recalled that one of the application requirements set out in Section 3 of this Notice provides that an application must be accompanied by details of the Television Services (which must include Public Service DTPS or Qualifying Services (but need not include any HD services) and DTAS (if any)) the applicant proposes to provide if digital capacity is reserved for it by the Committee.
- 5.56 In case applicants might be so assisted in making their applications, Ofcom sets out below some guidance on how it expects to approach this matter.
- 5.57 The test that Ofcom will apply to ascertain if the service in question appears to Ofcom to be equivalent to a Qualifying Service (and, if so, it will vary the DRL licence) is, put broadly, to ask whether (or not) the proposed service:
- appears to Ofcom to be a service that is equivalent in all material respects to the Qualifying Service;
 - is for an area or at times which, though substantially the same as in the case of the Qualifying Service, are not identical.
- 5.58 If Ofcom considers the proposed service is licensable under the DRL, Ofcom will vary the relevant DRL as described in paragraphs 5.70 to 5.75 below. Such variations will include (among other things) an Annex to the licence containing the commitments that relate to the reservation of capacity.
- 5.59 On the other hand, if Ofcom considers the proposed service is not licensable under the DRL in light of the above test, it will grant a Public Service DTPS licence containing the provisions discussed in the subsection beginning at paragraph 5.62 below.
- 5.60 If the public teletext provider or S4C would be reserved capacity, Ofcom intends to authorise the broadcasting of services proposed to be provided by that broadcaster on reserved capacity by granting a Public Service DTPS licence.
- 5.61 Ofcom notes that the licensing situation for Channel 3 licences is more complex than for other Relevant PSBs and the exact licensing route will be dependent on the proposals made. If the application was made on behalf of less than all the regional Channel 3 licences, for those regions not included in the application Ofcom would expect to either grant Public Service DTPS licences for those areas to the nominated application DRL, if DRL variations were being undertaken, or would amend the Public

Service DTSPS licence of the nominated application DRL if capacity was being reserved through the Public Service DTSPS route.

Grant of Public Service DTSPS

- 5.62 As mentioned above, the 2008 Order makes provision for the grant of a new type of DTSPS licence (i.e. a Public Service DTSPS licence) for the purposes of applications for proposed reserved capacity.
- 5.63 Article 5 defines a Public Service DTSPS as:
- “...a digital television programme service provided by a relevant public service broadcaster under a digital programme licence which—
- (a) has been granted by OFCOM (whether by virtue of article 3(9) or subsequently) under section 18 of the 1996 Act (licensing of digital television programme services), as modified by article 6; and;
- (b) accords with section 19 of that Act (duration and conditions of digital programme licences), as modified by article 7;
- and in this Order such a licence is referred to as a “public service digital programme licence”.
- 5.64 It has also been noted in paragraph 5.2 above that Ofcom is required to grant a Public Service DTSPS licence in respect of the services the applicant proposes to provide, except where it appears to Ofcom that any proposed service is equivalent to a Qualifying Service (or DTAS, see further in paragraphs 5.76 to 5.78 below).
- 5.65 A Public Service DTSPS licence may also be granted by Ofcom to the Welsh Authority (see article 6(5) of the 2008 Order).
- 5.66 Where Ofcom considers it appropriate to license the broadcasting of services using reserved capacity under the terms of a Public Service DTSPS licence, the general terms and conditions attaching to the capacity set out in paragraphs 5.11 to 5.53 above will be secured in the licence by specific provisions (except where they are to be secured solely under the terms of reservation through variations to the Multiplex B licence). Such specific provisions will therefore secure that the applicant provides the services promised by the applicant for the duration of the licence.
- 5.67 As a result, applicants should be aware that the nature of authorisation under a Public Service DTSPS is significantly different to a standard DTSPS because it will include requirements on the applicant:
- to supply the service to the holder of the Multiplex B licence for multiplexing and transmission; and
 - to implement other related commitments made in the application, such as obligations with regard to DSO, the timetable for launch of the services, promotion of the new services and communications with viewers (see further details in Section 4 of this Notice).
- 5.68 In addition to those specific provisions, a Public Service DTSPS licence will include all such licence conditions as apply to DTSPS licences in standard form, a copy of which

is available on Ofcom's website³⁴, with the modifications in relation to some of them, as set out in Table 1 below.

Table 1: Standard DTPS licence conditions, as modified for a Public Service DTPS

Standard DTPS licence	Public Service DTPS licence modifications
Condition 15 (Compliance with ownership restrictions)	The licence may only be held by a nominated PSB with a valid DRL or the Welsh Authority.
Condition 22 (Power of Ofcom to vary licence conditions)	In addition to the standard form, this will be qualified to ensure that, where the holder of a Public Service DTPS licence applies for the variation of any condition included in that licence by virtue of section 19(3A) of the 1996 Act (as amended by article 7 of the 2008 Order), Ofcom must grant the application unless it appears to Ofcom that, if the application were granted, the capacity of the Public Service DTPS provided under it (or any DTAS associated with it) to further the objectives mentioned in article 3(8) of the 2008 Order would be unduly diminished.
Condition 29 (Revocation)	In addition to the standard form, a Public Service DTPS licence may be revoked by Ofcom (and it shall no longer remain in force) upon: <ul style="list-style-type: none"> • the expiry or other termination of the Multiplex B licence; • the reservation on Multiplex B is revoked; • in a case where the holder of a Public Service DTPS licence also holds a Channel 3 licence or a licence to provide Channel 5, the holder ceases, by virtue of article 4(3)(a) or 4(4) of the 2008 Order, to have digital capacity on Multiplex B reserved for it.
Condition 30 (Digital Switchover)	In addition to the standard form, provisions regarding the communication to viewers of new services will be included, to assist with the promotion of take up, and also those which specify commitments made by the Relevant PSB in its application as to how it will reduce any impact on the DSO process, including those which seek to reduce consumer confusion associated with the new services.

5.69 Applicants' attention is also drawn to guidance on DTPS (and DTAS) licences published on the Ofcom website³⁵ to the extent it applies in light of above-mentioned specific provisions or modifications set out in Table 1 above.

³⁴ http://www.ofcom.org.uk/tv/ifi/tvlicensing/guidance_notes_and_apps/notes/dtps_licence.pdf

³⁵ http://www.ofcom.org.uk/tv/ifi/tvlicensing/guidance_notes_and_apps/notes/

Variations to DRLs

- 5.70 Ofcom has powers to vary conditions contained in the DRLs. Generally, it has a broad power under section 3(4) of the 1990 Act to vary these licences if:
- in the case of a variation of the licence period, the licence holder consents; or
 - in the case of any other variation, the licence holder has been given a reasonable opportunity of making representations to Ofcom about the variation.
- 5.71 In this regard, applicants' attention is drawn to the application requirement set out in paragraph 3.15.2 of this Notice that, by giving the related declaration, Ofcom may treat his application as giving the applicant's consent to all such variation(s) to his DRL as may be required in Ofcom's opinion to give effect the use of the reserved capacity (see also the application template at Annex 2 to this Notice).
- 5.72 The exercise by Ofcom of these powers to vary licence conditions may, however, depend on applicants' precise proposals and the DRL in question, such as for Channel 3 licences in the provision of regional services. Therefore, Ofcom is not in a position to propose in this Notice all possible variations of the DRLs that it may consider would be appropriate.
- 5.73 While Ofcom reserves the right to make additional variations to the DRLs, certain specific variations to be proposed by Ofcom will include the terms and conditions attaching to the reserved capacity set out in paragraphs 5.31 to 5.53 above to be secured in the DRL, which conditions will also include:
- authorising as well as requiring the provision of services by the licensee using the capacity reserved to it on Multiplex B;
 - requiring the supply of the promised service to the holder of the Multiplex B licence for multiplexing and transmission, which requirement will be additional to a similar requirement for the applicant to otherwise supply the Qualifying Service to a holder of another multiplex licence;
 - requiring the implementation of other related commitments made in the application, such as obligations with regard to DSO, the timetable for launch of the services, promotion of the new services and communications with viewers (see further information as described in Section 4 of this Notice).
- 5.74 Ofcom also proposes to vary the existing revocation condition of the DRLs (similarly to the Public Service DTSPS licence set out above), such that the use of the reserved capacity for broadcasting of the Qualifying Service to which that capacity relates will no longer be authorised if:
- the Multiplex B licence terminates or expires;
 - the licence conditions are breached and not rectified in accordance with Ofcom directions, any termination would obviously be a matter for determination by Ofcom;
 - in the case of the Channel 3 licensees, the services or services authorised to be broadcast by means of the reserved capacity are no longer provided on behalf of at least 13 holders of such licences.

- 5.75 The inclusion of these terms in the DRL may have an impact on the calculation of the level of any fees that may become payable as a consequence of holding the DRL. This recalculation could result from any decision by Ofcom to reassess the fees as part of its regular review, during any future licence renewal should such a renewal process occur, or at any other appropriate time as Ofcom sees fit.

Grant of DTAS

- 5.76 Pursuant to article 3(9)(c) of the 2008 Order, Ofcom must treat any application that includes proposals for providing DTAS on such capacity (otherwise than as a service that is or is comprised in a Qualifying Service) as an application for a DTAS licence made by the applicant in question under section 25(1) of the 1996 Act.
- 5.77 Where Ofcom considers it appropriate to reserve capacity for the provision of a DTAS licence, the standard conditions of a DTAS licence will apply to that service. A copy of the standard form licence is available on Ofcom's website³⁶. Applicants' attention is also drawn to guidance on DTAS (and DTPS) licences published on the Ofcom website³⁷.
- 5.78 In summary, a DTAS licence authorises the provision of the proposed service or services by the applicant (and will as such be specified in the Annex to the licence containing details of name and nature of service, times of broadcast, identity of multiplex and multiplex licensee carrying the service).

Variations to the Multiplex B licence

- 5.79 Ofcom already has powers to vary licence conditions of the Multiplex B licence (see Condition 17 of the licence).
- 5.80 However, pursuant to article 4 of the 2008 Order, Ofcom is required to vary that licence to include certain conditions. In this regard, it should be noted that article 11(2)(b) of the 2008 Order makes certain modifications to section 12 of the 1996 Act in relation to Ofcom's variation powers, namely:
- section 12(2) which provides that certain conditions of a multiplex licence can be varied only with the holder's consent; and
 - section 12(3) which provides that, subject to a proviso, Ofcom must grant applications for certain variations,

shall not apply to any variation to such licence made pursuant to the 2008 Order (and therefore this Notice) and Condition 17 of the Multiplex B licence should be read accordingly.

- 5.81 Article 11 of the 2008 Order makes further modifications to section 12 of the 1996 Act with following effect:
- 5.81.1 section 12(1)(e), which provides that a multiplex licence shall include conditions appropriate for securing that the licence holder does not unduly discriminate between broadcasters, shall have effect as if it were expressed to have effect subject to the 2008 Order;

³⁶ http://www.ofcom.org.uk/tv/ifi/tvlicensing/guidance_notes_and_apps/notes/dtas_licence.pdf

³⁷ http://www.ofcom.org.uk/tv/ifi/tvlicensing/guidance_notes_and_apps/notes/

5.81.2 section 12(1)(f), which provides that a multiplex licence shall include conditions appropriate for securing that the licence holder does not restrict the freedom of any person entitled to use capacity on the multiplex to arrange for another person to use that capacity) shall have effect in relation to those licences as if:

it required any condition included in the licence by Ofcom by virtue of it to have effect subject to any conditions so included by virtue of the 2008 Order; and

it provided that those licences may in particular contain such conditions as Ofcom considers appropriate for securing that the holder does not, without Ofcom's prior consent, use any of the capacity reserved by virtue of the 2008 Order otherwise than for the broadcasting of services provided by (i) any holder of a Channel 3 licence, or any two or more holders of such licences acting together, or any body corporate which is controlled either by the holder of a Channel 3 licence or by two or more holders of such licences acting together; (ii) the holder of a licence to provide Channel 5 or any body corporate which is controlled by the holder of such a licence; (iii) C4C or a body corporate which is controlled by C4C; (iv) the public teletext provider or any body corporate which is controlled by it; (v) the BBC or a body corporate which is controlled by the BBC; or (vi) the Welsh Authority or a body corporate which is controlled by that Authority.

5.82 In light of the above, Ofcom proposes to vary the Multiplex B licence to include the terms and conditions attaching to the reserved capacity as set out in paragraphs 5.11 to 5.53 above, together with the certain additional and related variations, in particular:

- Condition 6 (Transmission arrangements, technical standards requirements) will require through amendment of the 'Reference Parameters for Digital Terrestrial Television Transmissions in the United Kingdom' (to which the Television Technical Performance Code refers) the holder of the Multiplex B licence to transmit in the DVB-T2 and MPEG-4 standards from the launch of the new services, which is expected to begin at DSO in the Granada region in late 2009. The rollout of new services will follow the DSO timetable in subsequent regions, as specified in the Multiplex B licence. The Multiplex B holder will be required to upgrade the multiplex and launch the new services in areas which will have already completed DSO (prior to the launch in the Granada region) within 12 months or some other date as may be agreed in writing between Ofcom and the licensee, of transmitting the new services in Granada.
- Condition 11(2) (Fair and effective competition) will be varied to make clear that the holder of the Multiplex B holder is not subject to the requirement of not showing undue discrimination either against or in favour of a particular person or class of persons in relation to digital capacity reserved for Relevant PSBs under this Notice.
- Condition 11(3) (Fair and effective competition) will be varied to ensure that the prohibition on the holder of the Multiplex B licence will apply also with regard to Public Service DTSPS or Qualifying Service in relation to reserved capacity, subject to the Relevant PSB obtaining Ofcom's prior written consent for it to make arrangements with another person as to the use of any of that capacity.
- Condition 15 (Prohibition on Conveyance of unlicensed services) will be varied to require the holder of the Multiplex B licence ensuring that all services provided by

each Relevant PSB for broadcasting by means of reserved capacity under this Notice are provided by the holder of a Broadcasting Act licence, including a Public Service DTSP licence.

- To enable the reorganisation, the Core Proposals currently specified in the Annex to the Multiplex B licence will be varied to remove the requirement to broadcast existing services.

5.83 While the above makes reference to certain apparent modifications which will be needed as a result of a reservation of capacity on Multiplex B, Ofcom reserves its position to propose additional variations not mentioned above, in order to give further effect to the terms of the 2008 Order and the launch of new services as provided for in this Notice.

Consequential variations to other Multiplex licences

5.84 If and when Ofcom makes a determination to reserve capacity on Multiplex B, it will then be necessary to reorganise services currently carried on Multiplexes 2 and A licences (see paragraph 5.6 to 5.8 above). The 2008 Order places a duty on Ofcom at that point to vary those licences to give effect to such reorganisation. The following subsections simply outline the main changes that will be needed. Ofcom will discuss these changes with the relevant Multiplex licence holders at the time variations are to be required.

Multiplex 2

5.85 In order to clear Multiplex B and upgrade it to the new transmission and coding standards, the services currently carried on it must be moved to other multiplexes. Most of these services will move to Multiplex 1 but there is insufficient capacity for all of the services on Multiplex B to be carried there. The 2008 Order provides for a number of reorganisation moves between Multiplex 2 and Multiplex A. In addition to these movements, Ofcom anticipates that the services from Multiplex B that cannot fit onto Multiplex 1 will be carried by C4C on their capacity on Multiplex 2.

5.86 Where Ofcom reserves capacity on Multiplex B, it must vary the Multiplex 2 licence (as required by article 8 of the 2008 Order) to:

- reserve 48.5% of the digital capacity available on the frequencies on which Multiplex 2 is broadcast throughout the appropriate area³⁸ for the holder of a Channel 3 licence less digital capacity sufficient for the broadcasting (as an SD service) of Channel 5 throughout the British Islands (which lesser amount is to be reserved for the holder of a licence to provide Channel 5);
- reserve 48.5% of the digital capacity available on the frequencies on which Multiplex 2 is broadcast throughout the British Islands for C4C less digital capacity sufficient for the broadcasting (as an SD service) of the service known as S4C Digital (or S4C Digidol) throughout Wales (which lesser amount is to be reserved for the Welsh Authority); and
- reserve 3% of the digital capacity available on the frequencies on which Multiplex 2 is broadcast throughout the British Islands for the public teletext provider.

³⁸ Article 8(4) of the 2008 Order defines “the appropriate area” as, in relation to the holder of a national Channel 3 licence, the British Islands; and, in relation to the holder of a regional Channel 3 licence, the area for which the service provided pursuant to that licence is authorised to be provided.

- 5.87 As noted above, these variations will only be triggered if Ofcom has made the variations to Multiplex B licence as required by article 4 of the 2008 Order. Ofcom expects that such variations will be made so that they are in place as from the time the variations to reserve capacity on Multiplex B take effect or as close to this as is technically achievable taking into account the time needed for the necessary engineering changes and upgrades.
- 5.88 The Multiplex 2 licence will be varied to ensure that, at any time when there is digital capacity on Multiplex 2 reserved for a Relevant PSB (other than the public teletext provider):
- an appropriate broadcaster (as defined in article 8(6) of the 2008 Order);
 - the holder of the Multiplex 2 licence; or
 - both (or all) of them
- may refer to Ofcom for determination any question arising as to the amount of digital capacity which is sufficient for the broadcasting of S4C Digital or (as the case may be) Channel 5 (in either case, as an SD service).
- 5.89 In addition, the Multiplex 2 licence will be varied to secure that, in consideration for the making by the holder of a licence to provide Channel 5, the Welsh Authority and the public teletext provider, respectively, of such payments as are from time to time agreed between the broadcaster and the holder of the Multiplex 2 licence or, in default of agreement, determined by Ofcom the holder of the Multiplex 2 licence will use the digital capacity reserved on Multiplex 2 as mentioned in paragraph 5.86 above for the broadcasting of services provided by those broadcasters.
- 5.90 The Multiplex 2 licence shall not, without Ofcom's prior written consent, allow services to be broadcast by anyone other than those included in the list referenced in paragraph 5.81.
- 5.91 While the above sets out variations required under the 2008 Order, Ofcom reserves its position to make additional variations to the Multiplex 2 licence not mentioned above, in order to give further effect to the terms of the 2008 Order and the launch of new services as provided for in this Notice. For example, an apparent further variation to the Multiplex 2 licence is to remove the requirement to carry those existing services, which as a result of the reorganisation, will no longer be carried on Multiplex 2.

Multiplex A

- 5.92 Where Ofcom has reserved capacity on Multiplex 2 for the holder of a licence to provide Channel 5 as mentioned above, Ofcom is pursuant to article 9 of the 2008 Order required to vary also the Multiple A licence to reserve 50% of the digital capacity available on the frequencies on which Multiplex A is broadcast throughout the British Islands for that holder, less digital capacity sufficient for the broadcasting (as an SD service) of Channel 5 throughout the British Islands.
- 5.93 Similarly, where Ofcom has reserved capacity on Multiplex 2 for the Welsh Authority as mentioned above, Ofcom is pursuant to article 10 of the 2008 Order required to vary also the Multiplex A licence to reserve 50% of the digital capacity available on the frequencies on which Multiplex A is broadcast throughout Wales for the Welsh

Authority, less digital capacity sufficient for the broadcasting (as an SD service) of the service known as S4C Digital (or S4C Digidol) throughout Wales.

- 5.94 Both variations will be triggered only if Ofcom has made the changes to Multiplex 2 required by article 8 of the 2008 Order as regards capacity for the holder of a licence to provide Channel 5 and the Welsh Authority. Also, both Multiplex licences will be varied to ensure that parties can seek a determination from Ofcom as to the amount of capacity which is sufficient for the broadcasting of the specified services.
- 5.95 Again, while the above sets out variations required under the 2008 Order, Ofcom reserves its position to make additional variations to both Multiplex licences not mentioned above, in order to give further effect to the terms of the 2008 Order and the launch of new services as provided for in this Notice.

Annex 1

Guidelines and procedures for submission of applications

- A1.1 The application should be presented in the format prescribed by Ofcom in Annex 2 to this Notice, and it must respond to all of the requirements set out therein. Each page of the application must be numbered. All narrative should contain uniquely numbered paragraphs, and all financial or other tables within the supporting narrative should also be uniquely numbered and referenced using these numbers.
- A1.2 Applications must be written in English, clear, concise and simple in layout and style. Overly elaborate applications which include videos and/or other supplementary promotional material are strongly discouraged. Ofcom will not be influenced by the inclusion of illustrations or other devices designed to enhance the visual appeal of an application. In particular, applications should not include photographs and/or pictures. A limited number of charts are acceptable.
- A1.3 An electronic copy (in Microsoft Word 2003 format or Adobe pdf) on a CD ROM and 15 hard copies of the application must be received by Ofcom by no later than the closing date and time specified in Section 3 of this Notice. Applications received after this time will not normally be accepted.
- A1.4 All applications will be acknowledged upon receipt.
- A1.5 Applications should be delivered to the Riverside House reception and addressed to Chris Adams c/o Riverside House Reception, Ofcom, Riverside House, 2a Southwark Bridge Road, London SE1 9HA. Applications must use and attach the proforma application label as defined in Annex 4 to the outside of their application package. Applicants should note that in relation to item 'List any other enclosures' on the application label they must include each and every item contained within the application package they deliver to Ofcom. Ofcom will use this information to verify that it has received all relevant documentation from each applicant.
- A1.6 An applicant may submit more than one application (for additional proposals) but must do so separately. Each application will be considered independently.
- A1.7 Ofcom considers that submission of an application indicates a willingness to accept a licence offered on the terms indicated in the proposal.
- A1.8 Failure to comply with any of the above guidelines may render the application invalid.
- A1.9 Any queries regarding applications should be sent to chris.adams@ofcom.org.uk.

Annex 2

Application template

Introduction

- A2.1 Applicants shall submit an application using the application template below. Particular note should be taken to address the specific requirements given under each numbered heading.
- A2.2 Ofcom expects applications to be succinct and thoughtfully compiled to limit excessive length and written in plain English.

Application for Multiplex B capacity

1. Executive summary

Each application must include an executive summary of the full application consisting of no more than 4 pages in length. It should represent a standalone version of the proposal, which highlights the key components, including plans for the Evening Hours proposal.

2. Applicant Details

Name: The applicant must be a single legal entity who complies with the eligibility criteria set out in Section 3 of this Notice. For Channel 3 licensees, details should be provided for the lead applicant.

Address:

Telephone:

Fax:

Email:

3. Main Contact (for Public Purposes)

Name: Please nominate at least one individual to deal with any press or public enquiries.

Address:

Telephone: (office hours, both landline and mobile if applicable)

Email:

4. Main Contact (for Ofcom Purposes)

The response to this question may be submitted in confidence by placing it in a clearly marked, separate annex to the rest of the application. If an applicant does not submit the response to this question in a separate annex, the response will be published.

Name: Please nominate one individual to whom questions of clarification and/or amplification should be sent.

Address:

Telephone: (office hours, both landline and mobile if applicable)

Email:

Throughout the following numbered sections applicants should take care to highlight the commitments they are proposing to make for the use of digital capacity on Multiplex B. Commitments are the aspects of the entire proposal that, should it be appropriate, Ofcom will incorporate as licence obligations when reserving capacity for a successful applicant. At a high level, the intention is for applicants to set out their proposals for Evening Hours and day time/night time hours proposals and then discuss how these proposals will meet the three selection criteria.

5. Proposals for Evening Hours and day time/night time hours

Describe your proposals for the reserved capacity, including commitments to be incorporated as licence obligations. The timetable for launch of service should also be described.

Evening Hours:	
Day time/night time hours (other than Evening Hours):	

Does the proposal constitute a Qualifying Service? Yes No

If yes, please explain how the proposal meets the requirements of the qualifying service

Channel 3 licensees only (where applicable): If the application is not on behalf of all licensees, please clearly explain how you will obtain any necessary rights to allow broadcasting of services nationally (i.e. within the Channel 3 regions not participating in the application).

6. Selection Criterion 1: Promote the efficient use of the radio spectrum

6A. Generally explain how your proposal meets the different aspects of selection criterion 1 as detailed in Section 4, particularly with regard to promoting efficient use of spectrum and encouraging take up of DVB-T2/MPEG-4 compatible reception equipment.

6B. Explain the types of content you propose to provide that will have the necessary popular appeal to promote uptake of consumer equipment (e.g. premiering) and how this relates to the service type that is being proposed (eg. higher picture quality of HD).

6C. Explain how your proposal will encourage manufacturers to build the new equipment as quickly as possible so that they can be offered widely for sale by retailers as soon as possible.

6D. Explain how your proposal commits to undertake marketing, investment and promotion activities of new services on launch and over time (such as utilising existing branding) to drive take up of equipment as quickly and widely as possible.

The response to this Question 6D may be submitted in confidence by placing it in a clearly marked, separate annex to the rest of the application.

6E. Explain how your proposal demonstrates clear and robust plans to launch services as soon as possible (ie. Granada DSO in late 2009).

6F. Explain how your proposal ensures any potential negative impacts on the DSO programme are reduced, including potential for consumer confusion and impacts of launching new services.

6G. Explain how your proposal is likely to ensure that the Multiplex B operator will be supported to migrate to four HD channels over time while maintaining an acceptable level of service quality.

6H. Explain how your proposal will maximise utility of the reserved capacity throughout the 24 hour period, through scheduling, content sourcing and capacity sharing.

7. Selection Criterion 2: Contribution to the fulfillment of the purposes and characteristics of public service television broadcasting in the British Islands

7A. Generally explain how your proposal meets the different aspects of selection criterion 2 as detailed in Section 4, particularly how the purposes of public service broadcasting will be fulfilled in a manner that is compatible with section 264(6) of the 2003 Act.

7B. Explain how your proposal meets the purposes of public service broadcasting eg. to inform and increase understanding of the world, stimulate interest through varied content, reflect/strengthen cultural identity, and awareness of different cultures/viewpoints.

7C. Explain how your proposal meets the characteristics of public service broadcasting, eg. high quality, original, innovative, challenging, engaging and widely available.

8. Selection Criterion 3: Contribution to enhancing or maintaining the range and diversity of high quality television services available on digital terrestrial television

8A. Explain how your proposal meets the different aspects of selection criterion 3 as detailed in Section 4, particularly the extent to which their proposals contribute to enhancing or maintaining the range and diversity of high quality Television Services.

8B. If applicable, explain how a proposal seeking to offer an HD service will aim to provide (in the longer term) HD programming in full, native HD format, including a timetable increasing over time.

9. Other supporting information

Please use this section to provide any additional supporting information for your application, bearing in mind Ofcom's request to receive succinct applications.

10. Declaration

All applicants should use the declaration at 9A below, except Channel 3 licensees who should use the alternative declaration under 9B (as explained in Section 3 of this Notice).

(i) Applicants (except for Channel 3 licensees)

I hereby apply for and on behalf of [*INSERT Applicant Name as indicated at Section 2 of this Annex*] (the "**Company**") to the Office of Communications ("**Ofcom**") for the reservation of digital capacity sufficient for the broadcasting of one HD service (as specified in Section 2 of Ofcom's Notice dated 2 July 2008) in order to provide the service(s) proposed in this application.

I also apply for, on behalf of the Company, the grant of a licence for a Public Service DTSP (except in the case of any proposed service that appears to Ofcom to be a Qualifying Service in which case I hereby give the Company's consent to Ofcom to vary the licence to which the Qualifying Service relates in such manner and extent as Ofcom considers appropriate for this purpose) and the grant of a licence for a DTAS (if any) proposed in this application.

I confirm that the appropriate payment has been submitted for this application. I further confirm that the Company consents to Ofcom publishing this application on its website or otherwise disclosing this application to any person, together with the Company's responses to any request by Ofcom for the Company to furnish additional information about its proposal. This consent does not extend to any part of this application or such responses that the Company has requested that Ofcom should keep confidential by including such information in a separate annex clearly marked 'confidential'.

I declare that the information given by the Company in this application form is accurate and up-to-date to the best of my and the Company's knowledge.

I further declare and warrant that the Company is not a disqualified person within the meaning of that expression as defined in Part II of Schedule 2 to the Broadcasting Act 1990 or as a result of a disqualification order under section 145 of the Broadcasting Act 1996, and that having made all reasonable enquiries neither the Company nor any person by which the Company is controlled will, as a result of this application, be in breach of any other requirement of Schedule 2 to the 1990 Act as amended.

Applicant holder of DRL licence (*specify*):

Signature:

Name (BLOCK CAPITALS):

Position:

Date:

(ii) Channel 3 licensees only

I hereby apply for and on behalf of [*INSERT*] (the "**Lead Applicant**") and each of the holders of Channel 3 licensees specified below (individually referred to as the "**Joint Applicants**") to the Office of Communications ("**Ofcom**") for the reservation of digital capacity sufficient for the broadcasting of one HD service (as specified in Section 2 of Ofcom's Notice dated 2 July 2008) in order to provide the service(s) proposed in this application.

I also apply for, on behalf of the Lead Applicant and the Joint Applicants (collectively the "**Applicants**") the grant of licences for a Public Service DTSP (except in the case of any proposed service that appears to Ofcom to be a Qualifying Service in which case I hereby give the consent of each of the Applicants to Ofcom to vary the licence(s) to which the Qualifying Service(s) relates in such manner and extent as Ofcom considers appropriate for this purpose) and the grant of a licence(s) for a DTAS (if any) proposed in this application.

I confirm that the appropriate payment has been submitted for this application. I further confirm that each of the Applicants consents to Ofcom publishing this application on its website or otherwise disclosing this application to any person, together with the Applicants' responses to any request by Ofcom for the Applicants to furnish additional information about

the Applicants' proposal. This consent does not extend to any part of this application or such responses that the Applicants have requested that Ofcom should keep confidential by including such information in a separate annex clearly marked 'confidential'.

I declare that the information given by the Applicants in this application form is accurate and up-to-date to the best of my and the Applicants' knowledge.

I further declare and warrant that none of the Applicants are a disqualified person within the meaning of that expression as defined in Part II of Schedule 2 to the Broadcasting Act 1990 or as a result of a disqualification order under Section 145 of the Broadcasting Act 1996, and that having made all reasonable enquiries neither the Applicants nor any person by which the Applicants are controlled will, as a result of this application, be in breach of any other requirement of Schedule 2 to the 1990 Act as amended.

Lead Applicant

Applicant holder of DRL licence (*specify*):

Signature:

Name (BLOCK CAPITALS):

Position:

Date:

Declared for and on behalf of each Joint Applicant by its respective representative acting with its authorisation that the above-mentioned signatory for the Lead Applicant has made this application on behalf of each Joint Applicant and that that signatory has also been duly authorised to give the above-mentioned consents, declarations and warrant on the Joint Applicant's behalf.

Joint Applicant 1

Applicant holder of DRL licence (*specify*):

Signature:

Name (BLOCK CAPITALS):

Position:

Date:

Joint Applicant 2

Applicant holder of DRL licence (*specify*):

Signature:

Name (BLOCK CAPITALS):

Position:

Date:

[etc.]

Annex 3

Purdah rules

Purpose of the purdah rules

- A3.1 Members of the Committee should do their utmost to ensure that their behaviour is not likely to give rise to allegations that a decision taken by Ofcom is not impartial. These rules are designed to protect Ofcom and specifically the members of the Committee from accusations of partiality and unfair practice and also to protect them from lobbying and other forms of pressure.
- A3.2 The purdah rules represent Ofcom best practice in this area. However, colleagues and Members should be aware that it is their responsibility to ensure that their behaviour does not create an appearance of partiality or unfair practice by Ofcom. It is possible that matters not expressly covered by these rules could be relevant to the perceived fairness of a decision and colleagues and Members should be aware of this risk. If in any doubt, colleagues and Members should contact Ofcom's Secretary, Graham Howell, or, in his absence, General Counsel, Polly Weitzman.

Reservation of capacity on Multiplex B

- A3.3 Ofcom has adopted these rules covering contact with applicants for capacity proposed to be reserved on Multiplex B under this Notice to help guard against the risk of any appearance of partiality.

Who do the purdah rules apply to?

- A3.4 For the purpose set out in paragraph A3.3 above, the purdah rules apply to members who are permanent or additional members of the body empowered to make decisions in relation to any reservation of capacity (i.e. the Committee, as defined in Section 1 of this Notice).

Who will be on the 'purdah list'?

- A3.5 The Secretary will compile and circulate a list of the names of the companies and individuals connected with the applicants (the '**purdah list**'). The decision as to who should be included on the purdah list will be a matter for the Secretary's discretion in consultation with the Partner of Spectrum Policy Group.
- A3.6 The Secretary will circulate the 'purdah list' to members of the Committee who should ensure that their contact with these companies and individuals during the purdah period is in accordance with the rules set out below.

During what period do the purdah rules apply?

- A3.7 The period during which the purdah rules apply (the '**purdah period**') starts on the closing date for receipt of applications as specified in Section 3 of this Notice. If Ofcom would receive an application before the closing date, then the purdah rules will apply in respect of that applicant from the date on which Ofcom receives the application. The purdah rules cease to apply from the date on which the Committee makes its decision whether or not to make a determination to reserve some or all of the proposed capacity under this Notice.

What type of contact should be avoided during the purdah period?

Contact for business purposes

- A3.8 Members of the Committee may meet companies and individuals on the purdah list during the purdah period in order to discuss business matters not connected with matters for the Committee's assessment and decision under this Notice. Any such meetings should generally take place at Ofcom premises. The member should complete a form (as per template set out below) recording the date, time and location of the meeting, the attendees, a brief summary of the subject of the meeting, and confirmation that there was no discussion of the matters mentioned above. This form should be passed to the Secretary who will maintain a '**purdah log**' for this purpose and will monitor the frequency of contacts with individual applicants. It is important that all relevant contacts are recorded as the 'purdah log' will be made available to the public on request (although certain information, for example about the subject matter of meetings, may have to remain confidential in some circumstances).
- A3.9 Members should not generally visit business premises belonging to a company or individual on the purdah list during the purdah period. If there appears to be an urgent business need to do so, a member should discuss the matter with the Secretary or, in his absence, General Counsel before coming to a decision.

Social contact

- A3.10 Members may have social contact with persons on the purdah list in the context of attending a public event such as an industry festival. However, members should not generally give or receive hospitality from any company or individual named on the purdah list. But it is recognised that there could be circumstances where it is appropriate to make an exception to this rule, for example in the case of attendance at a reception hosted by an applicant company following a public event (see below).
- A3.11 In relation to third-party hospitality (i.e. hospitality offered by an individual or company not on the purdah list), members should exercise their judgement on a case-by-case basis as to whether it is prudent to accept the invitation. The smaller the gathering and the greater the proportion of likely attendees who are on the purdah list, the more cautious a member should be about accepting the invitation. Accordingly, members should check the nature of the event and the likely attendees and make a decision about whether to accept the invitation in light of that information, if necessary seeking the advice of the Secretary or, in his absence, General Counsel.
- A3.12 As is the case for business contact, members should complete a form recording details of any instances of social contact with a company or an individual on the purdah list during the purdah period and the completed form should be passed to the Secretary for the purposes of the purdah log.

Exceptional cases

- A3.13 If a member thinks that it would be appropriate to have contact (business or social) with a company or individual on the purdah list in circumstances where the type of contact involved should generally be avoided under the above rules, then he or she should discuss the matter with the Secretary or, in his absence, General Counsel before coming to a decision. It is the responsibility of each member to ensure that his or her behaviour does not create an appearance of partiality or unfair practice by Ofcom.

Template form for 'purdah log'

Date of contact	
Time	
Location	
Attendees	
Brief description of the purpose of meeting/ subject of discussion	
Was there any discussion relating to the reservation of capacity on Multiplex B in respect of which one or more of the attendees was on the 'purdah list'?	

Signed

Name

Date

Please pass the completed form to the Secretary, Graham Howell.

Annex 4

Label for applications

TO BE COMPLETED BY APPLICANT

Applicant:

Contact Name:

Phone number:

Mobile Number:

e-mail address:

Your reference:

Check list for enclosed items:

15 Hard copies

CD ROM with electronic version
(format as specified in Annex 1)

List any other enclosures:
(e.g. covering letter etc.)

TO BE COMPLETED BY OFCOM UPON RECEIVING APPLICATION

Date received: DAY MONTH YEAR

Time received: HOUR MIN

:

Signed:

Print Name:

Colleague ID: