



# Television Multiplex Licence Renewal

Multiplex B

Consultation

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## Section 1

# Summary

- 1.1 In 2002, Ofcom awarded a licence under the Broadcasting Act 1996 (“the 1996 Act” and “the Mux B Licence”) for the operation of the digital terrestrial television (“DTT”) multiplex service known as Multiplex B to BBC Free-to-View Limited (“BFtV”). This licence is due to expire in November 2014. Under the provisions of the 1996 Act the licensee may apply to renew its licence for a further period of 12 years.
- 1.2 In February 2012, Ofcom received an application from BFtV to renew the Mux B Licence for a further 12 year period. Under section 16 of the 1996 Act, when considering whether or not to renew a television multiplex licence, Ofcom has to decide whether to require additional obligations relating to: (a) the coverage of the service; and/or (b) promoting or assisting the acquisition of DTT receiving equipment. Ofcom also has to decide whether to require the licensee to make additional payments, in the form of a percentage of multiplex revenue. This document sets out for consultation our proposals in relation to this application. Following consultation, Ofcom will set out its position which is subject to the consent of the Secretary of State for Culture, Olympics, Media and Sport before any renewal or refusal to renew may take effect.
- 1.3 Ofcom is proposing to renew the Mux B Licence for a further 12 year term commencing upon the expiry of the existing term. Ofcom does not propose to require any additional coverage obligations or supplementary proposals for promoting or assisting the acquisition of DTT receiving equipment in the renewed Licence. Ofcom notes that this is the same basis on which the licences for Multiplexes A, 2, C and D were renewed.
- 1.4 We are also proposing not to require any additional payments (in the form of a percentage of multiplex revenue) to be made to Ofcom in respect of the Licence. The Licence has an associated licence to use spectrum issued under the Wireless Telegraphy Act 2006 (“WTA Licence”) and, in light of our intention to introduce charges for this type of licence from the end of 2014, we do not propose to require a payment under the Mux B Licence as well. In reaching that decision, we are also mindful of the fact that, in previously deciding to renew the licences for each of Multiplexes A, 2, C and D, we did not require any additional payments from those licensees.
- 1.5 In addition to considering whether to renew the Mux B Licence under section 16 of the 1996 Act, BFtV requested that Ofcom should also consider the removal of certain existing licence requirements related to the promotion of reception equipment. We propose that, subject to the formal consent of the licence holder in accordance with section 12(2) of the 1996 Act, the renewed Mux B Licence should be varied to remove these provisions. The provisions are as follows:
  - The definitions of “DTT Marketing Plan” and “ServicesCo” contained in Condition 1;
  - The words “through or involving ServicesCo or otherwise” in Condition 11(8);
  - Condition 11(9);
  - Annex A, Part 6;

- Annex B, Part 1.

1.6 We welcome responses on our proposals.

## Section 2

# Background to the Consultation

### Statutory requirements and background

- 2.1 The Mux B Licence was awarded in accordance with the 1996 Act with effect from November 2002 for a 12 year period and is due to expire in November 2014. In order to enable BFtV to operate the multiplex service covered by the Mux B Licence Ofcom also awarded a WTA Licence to BFtV, entitling BFtV to make use of the spectrum associated with the multiplex. The WTA Licence runs concurrently with the Mux B Licence and is due to expire in October 2014. This consultation concerns only the Mux B Licence granted under the 1996 Act, and does not consider the WTA Licence.
- 2.2 Under section 16 of the Broadcasting Act 1996, a television multiplex licence, if granted within six years of the 1996 Act, may be renewed, on one occasion, for a period of twelve years beginning on the date on which it would otherwise expire. A licence holder may submit an application for renewal during a specified timeframe, beginning four years prior to the original expiration date of its licence.
- 2.3 The Mux B Licence (one of the five<sup>1</sup> existing digital terrestrial television multiplex licences) will expire in 2014. In February 2012, BFtV applied for a renewal of the Mux B licence. BFtV also requested that as part of the renewals process, and in line with the approach taken when the Mux C and D licences were renewed, Ofcom should consider the removal of the obligations contained in the Licence under the DTT Marketing Plan and any other relevant licence conditions. Those conditions were included in the licence with the aim of promoting or assisting the acquisition of digital receiver equipment.
- 2.4 This consultation sets out Ofcom's proposals with respect to BFtV's application for renewal of the Mux B Licence and the removal of the specific and other related licence clauses.
- 2.5 Under the 1996 Act, when considering whether or not to renew a television multiplex licence we may require the licence holder to make supplementary proposals in relation to two aspects of the licence:
- we may require a new technical plan. This plan indicates the likely coverage area of the service, the timetable during which this coverage would be achieved, and the technical means by which it would be established;
  - we may also require supplementary proposals for the promotion of, or assistance with, the acquisition of equipment capable of receiving television multiplex services in the area covered by the service.
- 2.6 In requesting supplementary proposals, we must notify the applicant of any requirements which we consider should be met in respect of those proposals. The decision to require, or not to require supplementary proposals is subject to the consent of the Secretary of State and we will seek this consent at the conclusion of this consultation process.

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<sup>1</sup> The other four existing licences have been renewed. Multiplexes A and 2 were renewed on existing terms in 2010. Multiplexes C and D were renewed in February 2012.

- 2.7 Under section 16(8) of the Act, in addition to requiring supplementary proposals on the matters set out at paragraph 2.5 Ofcom may also, with the Secretary of State's consent, set or amend the percentage of multiplex revenue (PMR) that licence holders will have to pay during the renewed licence period. This is an 'additional payment' (additional to any licence fee that Ofcom may charge) under section 4 of the Act which is paid to HM Treasury. Ofcom set a PMR charge of zero to be paid by BFtV under Condition 4(5) of the existing Mux B Licence.
- 2.8 Pursuant to section 16(7) of the 1996 Act, Ofcom may only reject an application to renew a television multiplex licence where:
- It appears that the licensee has failed to comply with any of the conditions contained in the existing licence;
  - Any supplementary proposals required under section 16(4) of the 1996 Act do not meet the requirements set by Ofcom; or
  - Ofcom is not satisfied that the applicant would, if the licence were renewed, provide a service which complied with the conditions set out in that renewed licence.
- 2.9 The purpose of this consultation is to present Ofcom's proposals for the licence renewal process in relation to Multiplex B, including how we intend to exercise the powers granted to us, subject to consent of the Secretary of State, as set out above. We go on to consider whether any of the conditions set out in paragraph 2.8 are met, such that it would be appropriate to consider whether or not to reject the application.

## Section 3

# Ofcom's proposals

- 3.1 Ofcom has considered carefully whether or not to exercise its powers under section 16(4) and 16(8) of the 1996 Act in relation to the technical plan associated with the Mux B Licence, the promotion of equipment and the imposition of PMR.

### Technical Plan

- 3.2 Under section 7(4)(b) of the 1996 Act, applicants for the Mux B Licence were required to submit a technical plan to Ofcom setting out:
- the coverage area of the service;
  - the timetable in accordance with which that coverage will be achieved; and
  - the technical means by which it would be achieved.
- 3.3 Following the application of BFtV and the award of the Mux B Licence, Ofcom therefore included a condition in the licence which required BFtV to comply, in the provision of the licensed service, with the specifications set out in BFtV's technical plan. That plan includes the matters set out in the preceding paragraph. Ofcom has considered whether or not any supplementary proposals are required in respect of coverage matters and has concluded that it is not appropriate to require any supplementary proposals.

### Multiplex B

- 3.4 Multiplex B is a public service broadcasting multiplex. Ofcom has stated that; “*all three multiplexes which will broadcast public service broadcasting channels (i.e. the so-called “PSB multiplexes” 1, 2 and B) at DSO should aim to achieve similar levels of coverage to all sites being operated for DTT by adopting the same mode and similar levels of power. (The expectation is that these three multiplexes will achieve coverage of about 98.5 per cent of the UK population...)*”<sup>2</sup>
- 3.5 Ofcom remains of the view that supplementary coverage obligations beyond those contained in the Mux B Licence are not required. For the reasons set out in the preceding paragraph, Ofcom considers that, consistent with the position set out in 2006, following completion of DSO, the public service multiplexes, such as Multiplex B, will be able to provide 98.5% coverage. Ofcom does not therefore propose to require BFtV to furnish any supplementary technical plan. This is consistent with the approach taken in relation to the renewal of the licences for each of Multiplexes A, 2, C and D. Ofcom’s decision on whether or not to require a supplementary technical plan is subject to the consent of the Secretary of State and we would propose to submit any decision made to the Secretary of State shortly after the conclusion of the consultation process.

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

<sup>2</sup> “Switchover related changes to DTT licences”, Statement, 7 December 2006

[http://stakeholders.ofcom.org.uk/binaries/consultations/dtt\\_changes/statement/statement.pdf](http://stakeholders.ofcom.org.uk/binaries/consultations/dtt_changes/statement/statement.pdf)

## Promoting or assisting the acquisition of digital equipment

- 3.6 Under section 7(4)(f) of the 1996 Act, in its original application, the licensee of Multiplex B was required to set out its proposals for promoting or assisting the acquisition, by persons in the proposed coverage area of the service, of equipment capable of receiving television multiplex services in that area. In response to this requirement, BFtV, together with Arqiva Services Limited<sup>3</sup> proposed to introduce a new marketing and branding approach (under the name Freeview) which would require extensive promotional activity and cooperation with the manufacturing and retail industry.
- 3.7 To this end, BFtV and other broadcasters (Arqiva, BSkyB, Channel 4 and ITV) created a body in 2002 described in the licence as "ServicesCo" (now called Freeview) which serves as a marketing body for the DTT platform. Conditions were included in the licences for each of Multiplex B, C and D which relate to the membership of ServicesCo.
- 3.8 The purpose of the licence requirements in relation to the promotion of equipment was to enshrine within the licence the promises made during the application process.
- 3.9 The circumstances in which Multiplex B currently operates is very different from those of 2002: the process of digital switchover is in its latter stages and will complete during 2012. As of October 2011, 18 million homes use Freeview, with 10.2 million of these using Freeview as their primary television set<sup>4</sup>. This evidence demonstrates that there is now widespread knowledge of how digital television works and the equipment that is required to receive a digital signal. Indeed, Digital UK, the organisation set up to provide consumer information and assistance in the switchover process, provides help and assistance in this regard and will continue to do so until completion of digital switchover. Freeview also provides assistance and, on the basis that the marketing obligations would remain in force until the expiry of the existing Mux B Licence, will also continue to do so until digital switchover completes. By the time that digital switchover is complete across the country, it is reasonable to assume that awareness of digital receiver equipment will be even more widespread than it is now, which stands at a minimum of 93% of households.
- 3.10 By the time any renewed Mux B Licence comes into effect in November 2014, digital switchover for the whole of the UK will have been completed<sup>5</sup>. In this context and given the level of awareness of digital receiver equipment and the level of ownership of digital equipment, we consider that there appears to be little need to require the Licensee to furnish supplementary proposals for the promotion of, or assistance with, the acquisition of equipment capable of receiving television multiplex services in the area covered by the service. This is consistent with the approach taken in relation to the renewal of the licences for each of Multiplexes A, 2, C and D. Ofcom's decision on whether or not to require a supplementary technical plan is subject to the consent of the Secretary of State and we would propose to submit any decision made to the Secretary of State shortly after the conclusion of the consultation process.

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<sup>3</sup> Arqiva applied for the Multiplex C and D licences at the same time as Arqiva submitted its application for the Mux B Licence

<sup>4</sup> Source 27 October 2011, Freeview Press release <http://www.freeview.co.uk/Press/2011/Freeview-HD-Sales-Surpass-3-Million>

<sup>5</sup> Digital switchover will have been achieved during the course of 2012.

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

## Additional Payments

- 3.11 Under section 13 of the 1996 Act, Ofcom may require a television multiplex licensee to pay a percentage of multiplex revenue (PMR) in respect of their licence. This amount is in addition to any administrative fee payable to Ofcom in accordance with section 4(1)(b) of the 1996 Act. As a result of The Broadcasting (Percentage of Television Multiplex Revenue) Order 1996, no PMR has been payable by BFtV during its first licence period. This Order has expired, which means Ofcom may consider whether to specify a PMR payable during the renewed licence period.
- 3.12 In 2004 Ofcom defined multiplex revenue as:
 

*"all payments or other financial benefit received... in consideration of the inclusion in the services carried on the multiplex of advertisements or other programmes, or from charges for the reception of programmes included in those services. It also includes all payments received by the television multiplex licensee, or any connected person, in respect of the broadcasting of any qualifying service by means of the television multiplex licence licensee, or any connected person, in respect of the broadcasting of any qualifying service by means of the television multiplex licence or payments made to enable the television multiplex licence holder to meet its additional payments."*<sup>6</sup>
- 3.13 Where Ofcom decides, on consideration of an application to renew the licence that it is appropriate to set a charge calculated as a PMR, we need the Secretary of State's consent to include this obligation in the licence. In addition to these powers of consent, the Secretary of State may also positively direct Ofcom to set a particular rate; or make an order specifying that no rate shall be set.
- 3.14 In considering this issue, Ofcom is mindful of the fact that it has stated its intention to introduce charging for the spectrum used for digital terrestrial television broadcasting, starting from the end of 2014<sup>7</sup>. The pricing mechanism that Ofcom intends to employ is Administered Incentive Pricing ("AIP"), "*the charging of annual fees for the holding of spectrum that reflect the opportunity cost of the holding of that spectrum*". In our December 2010 Statement on the revised Framework for Spectrum Pricing,<sup>8</sup> Ofcom confirmed that it does not intend to implement AIP for digital terrestrial broadcasters before the end of 2014 and that it will consult nearer the time on any fees.
- 3.15 In light of this, Ofcom has considered the extent to which it is appropriate to introduce a charge based on PMR for any renewed Mux B Licence which would take effect from renewal in 2014. In this regard the 1996 Act did not set any specific limits or purpose for us, or the Secretary of State, in setting PMR. The 1996 Act enables Ofcom to charge licensees not only to reflect the 'spectrum' value of the multiplex licence but also for any additional non-spectrum value associated with the licence.

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<sup>6</sup> "Qualifying Revenue and Multiplex Revenue: Statement of Principles and Administrative Arrangements under Broadcasting Act 1990, Broadcasting Act 1996 and the Communications Act 2003", laid before Parliament 16 December 2004, Ofcom. p6

[http://stakeholders.ofcom.org.uk/binaries/broadcast/other-codes/qualifying\\_revenue.pdf](http://stakeholders.ofcom.org.uk/binaries/broadcast/other-codes/qualifying_revenue.pdf)

<sup>7</sup> "Future pricing of spectrum used for terrestrial broadcasting: A statement", 19 June 2007

<http://stakeholders.ofcom.org.uk/consultations/futurepricing/statement/>

<sup>8</sup> <http://stakeholders.ofcom.org.uk/consultations/srsp/statement>

AIP only reflects the opportunity cost of spectrum and cannot be used to reflect any non-spectrum value of a Broadcasting Act Multiplex Licence.

- 3.16 In considering whether to propose a rate, Ofcom has identified the following options :

**Option 1:** Set a zero rate for the entire duration of the renewed Mux B Licence, leaving AIP as the sole pricing mechanism starting from 2014;

**Option 2:** Set a rate in recognition of some or all of the value of the Mux B Licence. This rate would need to take into account the expected or confirmed level of WT Act licence fees (AIP); conversely, if PMR rates are set first, we would need to ensure that AIP fees did not reflect any element of spectrum value that had been taken into account by the PMR rate.

- 3.17 It is important to note that Ofcom has previously confirmed<sup>9</sup> that no licensee should find itself in the position of paying twice for the same spectrum rights. This approach is consistent with the approach taken when we renewed the licences for Multiplex A, Multiplex 2, Multiplex C and Multiplex D and our position has not changed.
- 3.18 Therefore our preferred approach is **Option 1**, setting a zero PMR rate for the entire duration of the licence, leaving AIP as the sole option for a future pricing mechanism, starting from the end of 2014.
- 3.19 Ofcom believes that this approach would be more appropriate than the other option for the following reasons:
- 3.19.1 AIP, in contrast to PMR, may be reviewed and adjusted periodically so reducing the risk that multiplex licensees would be over- or under- charged. As more information about the opportunity cost of the spectrum becomes available, prices could be adjusted during the duration of the licence. PMR would not allow for this level of flexibility.
  - 3.19.2 While PMR would have the potential advantage of allowing us to capture the full value of a licence (the value that a licensee might have been prepared to pay to hold the licence), it could reduce licence holders' incentives to maximise certain revenues. PMR payments are set as a rate, not a price, so the amounts payable would vary depending on the licensee's ability to generate multiplex revenue. Therefore, a licensee who took steps to carry more videotostreams, or to carry more profitable services, that could pay more for carriage, could pay more than another licensee for the use of the same amount of spectrum.
  - 3.19.3 In addition, as PMR is only payable on multiplex revenue, licensees could have incentives to maximise other revenue sources in preference to multiplex revenue, leading to a possible distortion of their commercial priorities and a resulting potential reduction in the overall benefits available to society.
  - 3.19.4 Ofcom has previously confirmed its intention that AIP should not be applied before 2014. Following a public consultation, the licences for Multiplexes A,

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<sup>9</sup> "Future pricing of spectrum used for terrestrial broadcasting – A Statement" Ofcom, June 2007, p.26  
<http://www.ofcom.org.uk/consult/condocs/futurepricing/statement/statement.pdf>

2, C and D have already been renewed on the basis that no PMR rate would be set and that AIP would not be applied before 2014.

3.19.5 Ofcom's proposed approach for the licence for Multiplex B recognises and is consistent with the approach taken in relation to the renewal of the licences for each of Multiplexes A, 2, C and D. In light of this, we think there would need to be significantly compelling reasons for Ofcom to adopt a different approach for the Mux B licence.

3.20 The following tables present the advantages and disadvantages of each option.

<b>Option 1</b>	<b>Advantages</b>	<b>Disadvantages</b>
PMR: Zero rate, or no rate specified, throughout the duration of the licence.  AIP: To be applied from 2014 onwards.	<ul style="list-style-type: none"> <li>• No need to adjust application of AIP to take PMR rate into consideration.</li> <li>• AIP could accurately reflect the opportunity cost of spectrum from the end of 2014 for all licensees.</li> <li>• AIP would give flexibility in setting appropriate pricing levels. Ofcom would be able to adjust pricing levels periodically.</li> <li>• No effect on multiplex licence holders' incentives in choosing where to invest to increase "multiplex revenues" or other revenues.</li> <li>• All multiplex licence holders would face charges set on the same basis, at the same time.</li> </ul>	<ul style="list-style-type: none"> <li>• There might be significant value resulting from the licences that is not related to the access to spectrum, which would not be reflected in payments to HM Treasury.</li> </ul>

<b>Option 2</b>	<b>Advantages</b>	<b>Disadvantages</b>
PMR: Set rate or rates taking into account the WT Act fee level (i.e. AIP).	<ul style="list-style-type: none"> <li>• Rates could potentially be set which would capture the full value of licences.</li> </ul>	<ul style="list-style-type: none"> <li>• Difficulty of predicting what value other than spectrum value will be in these licences in later years.</li> <li>• The incentive for licensees to maximise multiplex revenues would be reduced; greater multiplex revenues would lead to greater payments.</li> <li>• Risk that we estimate the</li> </ul>

		<p>value wrongly, leading to over- or under-charging with no mechanism to review the level of payments during the length of the licences.</p> <ul style="list-style-type: none"> <li>Having different systems of WT Act licence fees and Additional Payments for different holders of licences which are otherwise very similar seems unduly complex, and would reduce transparency.</li> </ul>
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*Question 3: Do you agree with our preference not to apply a charge for PMR in a renewed Mux B Licence, in light of our stated intention to charge AIP for spectrum used for broadcasting?*

### **Removal of certain conditions relating to promoting or assisting the acquisition of digital equipment**

- 3.21 In addition, in its application dated 3 February 2012, BFtV requested that it be offered the renewal on the same terms offered to Arqiva (the holder of the licences for Multiplex C and D) that is the removal of the following conditions from the Mux B Licence once it is renewed:
- The definitions of “DTT Marketing Plan” and “ServicesCo” contained in Condition 1;
  - The words “through or involving ServicesCo or otherwise” in Condition 11(8)
  - Condition 11(9);
  - Annex A, Part 6; and
  - Annex B, Part 1.
- 3.22 Although not required for the renewal process under section 16 of the 1996 Act, and in line with our approach in respect of the licences for Multiplex C and D, we are dealing with the removal of the above conditions at the same time as the renewal process because both matters required consideration of the position under section 7(4)(f) of the 1996 Act.
- 3.23 As we explained in our Statement on the Renewal of Multiplexes C and D<sup>10</sup>, our rationale for the removal of these conditions acknowledges that their inclusion in the original licences related to the DTT landscape at the time of the original licence awards and the desire to ensure that the DTT platform was able to promote itself

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<sup>10</sup> “Television Multiplex Licence Renewals – Multiplex C and Multiplex D”, Statement, 27 January 2012, <http://stakeholders.ofcom.org.uk/consultations/television-multiplex-renewals/statement>

effectively. In this regard, it is important to note the context in which this occurred, in that the award of the licences for Multiplexes B, C and D was being considered following the collapse of On Digital. As such, it can be assumed that under the new model for DTT, the aim was to secure full commitment from participants in order to establish a viable platform with long term prospects and to make participation on the platform as attractive as possible. However, in recognising that the DTT platform is now sufficiently mature, we are satisfied that the need to ensure the promotion of the platform through regulatory intervention in the form of licence obligations has now diminished. We also consider that outside of the relationship imposed by the regulatory framework, there already exists a relationship between the licensees and relevant industry bodies on the basis of commercial interests. When considered in the context of the current level of digital television take up and penetration and in the post-swatchover era, we are satisfied that the purpose of this intervention will have been fulfilled by the time of renewal. As such, we consider there is little need for such conditions to be included in the renewed licences.

- 3.24 In addition, Section 6 of the Communications Act 2003 (the “2003 Act”) places a duty upon Ofcom not to impose burdens which are unnecessary or maintain burdens which have become unnecessary. Section 3(3) of the 2003 Act further requires that in performing our duties, Ofcom must have regard to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed. Ofcom must also have regard to any other principles appearing to Ofcom to represent the best regulatory practice.
- 3.25 In line with our duties under the 2003 Act, Ofcom is therefore proposing the removal of the obligations referred to in paragraph 3.21 above from the renewed Mux B Licence. This is consistent with our approach in the renewal of Multiplexes C and D. We are also considering whether to remove equivalent conditions from the Multiplex A Licence (held by SDN Ltd) and the Multiplex 2 Licence (held by Digital 3 and 4 Ltd), as this was not considered at the time that these two licences were renewed.

*Question 4. Do you agree that Ofcom should vary any renewed Mux B Licence in order to remove the provisions set out at paragraph 3.21?*

# Next Steps

## Timing

4.1 The key dates in the process have been set by statute, and by Ofcom under statute:

	<b>Opening date for application</b>	<b>Closing date for application</b>	<b>Licence expiration date</b>
<b>Multiplex B</b>	16 November 2010	16 May 2013	15 November 2014

- 4.2 Ofcom received an application from BFtV to renew the Mux B Licence in February 2012. This consultation represents the start of the renewal process. We hope to complete the consultation process by 21 June 2012 and publish a statement shortly afterwards.
- 4.3 It is important to note that the Secretary of State retains the right to decide these issues differently from Ofcom's proposals and decisions. We hope that this consultation will help to inform licensees and provide the Secretary of State with relevant information for his decisions.
- 4.4 Where, as a result of this consultation, Ofcom considers that it is appropriate to make any additional changes to any renewed Mux B Licence, Ofcom will inform the licensee of those changes and, where appropriate, will consult further.

## Annex 1

# Clauses proposed for removal from the Multiplex B Licence

### Condition 1 Definitions and interpretation

A1.1 Delete the following:

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

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

### Condition 11 Fair and effective competition

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

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

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

### Annex A, Part 6

#### DTT MARKETING PLAN

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

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

**14.**

Without prejudice to the generality of the foregoing, the Licensee shall:

- (a) establish and maintain a referral service for a national organised aerial and installation service;
- (b) use all reasonable endeavours to strengthen existing technical collaboration between broadcasters, retailers and manufacturers of digital television receivers and shall, in particular:
  - (i) work with television manufacturers to implement a regime to test that broadcaster interactive service applications work effectively on receivers;
  - (ii) provide transmission capacity sufficient to enable manufacturers to upgrade their receiver software; and
  - (iii) provide Service Information for manufacturers' EPG services including the fuller advance programme applications needed for personal video recorder functions; and shall
- (c) implement the proposals in section 7.3.4 of his Application and in particular:
  - (i) provide and procure the provision by the BBC of on-air and off-air promotion including material to educate the public about digital terrestrial television and how to get it;
  - (ii) investigate a common kitemark to be awarded to manufacturers selling digital television receivers which meet a minimum functionality specification;
  - (iii) provide a consumer information telephone call centre, with postcode information and related advice on any aerial upgrade needed; and
  - (iv) provide information to manufacturers and retailers on reception and aerial issues.
- (d) commit a minimum annual expenditure equal to the marketing budgets for the period of the licence as set out in confidential Annex B;
- (e) commit subject to the receipt of the additional minimum contributions set out in confidential Annex B, the minimum annual marketing expenditure for the period of the licence as set out in that Annex; and

- (f) provide to Ofcom an Annual Report reporting on the expenditure incurred and an assessment of the impact of that expenditure on the digital terrestrial television broadcasting market including any impact data available; and
- (g) establish an appropriate method for measuring and reporting the level of digital terrestrial television receiver take-up and provide quarterly reports to Ofcom on the take-up of digital television and digital terrestrial television receivers.

**Annex B, Part 1**

**ADDITIONAL INFORMATION RELATING TO THE SERVICESCO  
MARKETING PLAN**

A1.5 Delete confidential Annex B, Part 1

## Annex 2

# Responding to this consultation

### How to respond

- A2.1 Ofcom invites written views and comments on the issues raised in this document, to be made **by 5pm on 21 June 2012**
- A2.2 Ofcom strongly prefers to receive responses using the online web form at <http://stakeholders.ofcom.org.uk/consultations/mux-b/howtorepond/form>, as this helps us to process the responses quickly and efficiently. We would also be grateful if you could assist us by completing a response cover sheet (see Annex 3), to indicate whether or not there are confidentiality issues. This response coversheet is incorporated into the online web form questionnaire.
- A2.3 For larger consultation responses - particularly those with supporting charts, tables or other data - please email [kathleen.stewart@ofcom.org.uk](mailto:kathleen.stewart@ofcom.org.uk) attaching your response in Microsoft Word format, together with a consultation response coversheet.
- A2.4 Responses may alternatively be posted or faxed to the address below, marked with the title of the consultation.

Kathleen Stewart  
Floor 5  
Radio Content and Broadcast Licensing  
Riverside House  
2A Southwark Bridge Road  
London SE1 9HA

Fax: 020 7783 4033

- A2.5 Note that we do not need a hard copy in addition to an electronic version. Ofcom will acknowledge receipt of responses if they are submitted using the online web form but not otherwise.
- A2.6 It would be helpful if your response could include direct answers to the questions asked in this document, which are listed together at Annex 4. It would also help if you can explain why you hold your views and how Ofcom's proposals would impact on you.

### Further information

- A2.7 If you want to discuss the issues and questions raised in this consultation, or need advice on the appropriate form of response, please contact Kathleen Stewart on 020 7783 4293

### Confidentiality

- A2.8 We believe it is important for everyone interested in an issue to see the views expressed by consultation respondents. We will therefore usually publish all responses on our website, [www.ofcom.org.uk](http://www.ofcom.org.uk), ideally on receipt. If you think your response should be kept confidential, can you please specify what part or whether

all of your response should be kept confidential, and specify why. Please also place such parts in a separate annex.

- A2.9 If someone asks us to keep part or all of a response confidential, we will treat this request seriously and will try to respect this. But sometimes we will need to publish all responses, including those that are marked as confidential, in order to meet legal obligations.
- A2.10 Please also note that copyright and all other intellectual property in responses will be assumed to be licensed to Ofcom to use. Ofcom's approach on intellectual property rights is explained further on its website at  
<http://www.ofcom.org.uk/about/account/disclaimer/>

### **Next steps**

- A2.11 Following the end of the consultation period, Ofcom intends to publish a statement shortly afterwards
- A2.12 Please note that you can register to receive free mail Updates alerting you to the publications of relevant Ofcom documents. For more details please see:  
[http://www.ofcom.org.uk/static/subscribe/select\\_list.htm](http://www.ofcom.org.uk/static/subscribe/select_list.htm)

### **Ofcom's consultation processes**

- A2.13 Ofcom seeks to ensure that responding to a consultation is easy as possible. For more information please see our consultation principles in Annex 3.
- A2.14 If you have any comments or suggestions on how Ofcom conducts its consultations, please call our consultation helpdesk on 020 7981 3003 or e-mail us at  
[consult@ofcom.org.uk](mailto:consult@ofcom.org.uk). We would particularly welcome thoughts on how Ofcom could more effectively seek the views of those groups or individuals, such as small businesses or particular types of residential consumers, who are less likely to give their opinions through a formal consultation.
- A2.15 If you would like to discuss these issues or Ofcom's consultation processes more generally you can alternatively contact Graham Howell, Secretary to the Corporation, who is Ofcom's consultation champion:

Graham Howell  
 Ofcom  
 Riverside House  
 2a Southwark Bridge Road  
 London SE1 9HA

Tel: 020 7981 3601  
 Fax: 020 7081 3601  
 Email [graham.howell@ofcom.org.uk](mailto:graham.howell@ofcom.org.uk)

## **Annex 3**

# **Ofcom's consultation principles**

A3.1 Ofcom has published the following seven principles that it will follow for each public written consultation:

### **Before the consultation**

A3.2 Where possible, we will hold informal talks with people and organisations before announcing a big consultation to find out whether we are thinking in the right direction. If we do not have enough time to do this, we will hold an open meeting to explain our proposals shortly after announcing the consultation.

### **During the consultation**

A3.3 We will be clear about who we are consulting, why, on what questions and for how long.

A3.4 We will make the consultation document as short and simple as possible with a summary of no more than two pages. We will try to make it as easy as possible to give us a written response. If the consultation is complicated, we may provide a shortened version for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.

A3.5 We will normally allow ten weeks for responses to consultations on issues of general interest.

A3.6 There will be a person within Ofcom who will be in charge of making sure we follow our own guidelines and reach out to the largest number of people and organizations interested in the outcome of our decisions. This individual (who we call the consultation champion) will also be the main person to contact with views on the way we run our consultations.

A3.7 If we are not able to follow one of these principles, we will explain why. This may be because a particular issue is urgent. If we need to reduce the amount of time we have set aside for a consultation, we will let those concerned know beforehand that this is a 'red flag consultation' which needs their urgent attention.

### **After the consultation**

A3.8 We will look at each response carefully and with an open mind. We will give reasons for our decisions and will give an account of how the views of those concerned helped shape those decisions.

## Annex 4

# Consultation response cover sheet

- A4.1 In the interests of transparency and good regulatory practice, we will publish all consultation responses in full on our website, [www.ofcom.org.uk](http://www.ofcom.org.uk).
- A4.2 We have produced a coversheet for responses (see below) and would be very grateful if you could send one with your response (this is incorporated into the online web form if you respond in this way). This will speed up our processing of responses, and help to maintain confidentiality where appropriate.
- A4.3 The quality of consultation can be enhanced by publishing responses before the consultation period closes. In particular, this can help those individuals and organisations with limited resources or familiarity with the issues to respond in a more informed way. Therefore Ofcom would encourage respondents to complete their coversheet in a way that allows Ofcom to publish their responses upon receipt, rather than waiting until the consultation period has ended.
- A4.4 We strongly prefer to receive responses via the online web form which incorporates the coversheet. If you are responding via email, post or fax you can download an electronic copy of this coversheet in Word or RTF format from the 'Consultations' section of our website at [www.ofcom.org.uk/consult/](http://www.ofcom.org.uk/consult/).
- A4.5 Please put any parts of your response you consider should be kept confidential in a separate annex to your response and include your reasons why this part of your response should not be published. This can include information such as your personal background and experience. If you want your name, address, other contact details, or job title to remain confidential, please provide them in your cover sheet only, so that we don't have to edit your response.

## Cover sheet for response to an Ofcom consultation

### BASIC DETAILS

Consultation title:

To (Ofcom contact):

Name of respondent:

Representing (self or organisation/s):

Address (if not received by email):

### CONFIDENTIALITY

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

Nothing

Name/contact details/job title

Whole response

Organisation

Part of the response

If there is no separate annex, which parts?

If you want part of your response, your name or your organisation not to be published, can Ofcom still publish a reference to the contents of your response (including, for any confidential parts, a general summary that does not disclose the specific information or enable you to be identified)?

### DECLARATION

I confirm that the correspondence supplied with this cover sheet is a formal consultation response that Ofcom can publish. However, in supplying this response, I understand that Ofcom may need to publish all responses, including those which are marked as confidential, in order to meet legal obligations. If I have sent my response by email, Ofcom can disregard any standard e-mail text about not disclosing email contents and attachments.

Ofcom seeks to publish responses on receipt. If your response is non-confidential (in whole or in part), and you would prefer us to publish your response only once the consultation has ended, please tick here.

Name

Signed (if hard copy)

## Annex 5

# Consultation questions

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

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

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

*Question 4: Do you agree that Ofcom should vary any renewed Mux B Licence in order to remove the provisions set out in paragraph 3.21?*

## **Annex 6**

# **Impact Assessment**

### **Introduction**

- A6.1 As we are proposing to make changes to licensees' marketing obligations, we have conducted an impact assessment on the regulatory impact of these aspects of the licences. As we are required to make a choice in respect of Additional Payments, we have also conducted an impact assessment of the Additional Payment options available to us.

### **Removal of obligations in relation to the promotion of, and assistance with, the acquisition of digital receiver equipment**

#### **Ofcom's policy objective**

- A6.2 In relation to the proposed licence changes, Ofcom's objective is to operate with a bias against intervention. The primary purpose for the original inclusion of the clauses proposed for removal was the applicants' extensive marketing proposals to promote assistance and acquisition of digital equipment. As the programme of digital switchover (DSO) is now nearly complete, the need for regulatory intervention is reduced.
- A6.3 Ofcom is under a duty to review its regulatory burden on stakeholders. In so doing, Ofcom is of the view that these obligations should ultimately be left to the market. There are established commercial relationships in place between the Licensee and relevant industry bodies, therefore it is no longer considered appropriate to regulate in this area.

#### **Impact on viewers and consumers**

- A6.4 Ofcom considers that the removal of obligations in relation to the promotion of, and assistance with, the acquisition of digital receiver equipment from the Mux B Licence would have a negligible impact on consumers on the basis that consumers are now well aware of the availability and nature of digital receiver equipment, which is currently present in 93% of households. This number is likely to increase by the time that any renewed Mux B Licence comes into effect in 2014 and therefore any impact on viewers and/or consumers is likely to be minimal at the time that the obligations are removed.

#### **Impact on other parties involved in DTT**

- A6.5 Ofcom does not consider that the removal of marketing obligations from the Mux B Licence would have an impact on the other parties involved in the DTT platform. In respect of Freeview, the marketing organisation created in accordance with the conditions which we are proposing to remove, Ofcom's view is that Freeview will continue to be able to market the DTT platform as it considers appropriate and the removal of the obligations will increase the commercial freedoms of the members of Freeview to run the organisation as they see fit without regulatory intervention.

- A6.6 As regards other participants within the DTT platform including other multiplex operators and broadcasters, Ofcom does not consider that the proposals have the potential to impact upon those stakeholders.

### **Charges based on PMR**

- A6.7 In relation to the proposals not to impose charges based on PMR in any renewed Mux B Licence, Ofcom has set out its impact assessment in the consideration of options in section 3.15 to 3.20