

Local TV Licence Transfer: Birmingham

Ofcom's Broadcast Licensing Committee ('BLC')¹ met on 17 November 2014 to consider a request for transfer of the Birmingham local digital television programme service ("L-DTPS") licence ("the Licence") from the Joint Administrators of the licensee, BLTV Limited ("BLTV").

After considering in full the proposal submitted to Ofcom, including the further information provided in response to Ofcom's requests for clarification ("the Proposal"), the BLC decided to consent to the transfer of the Licence to Kaleidoscope TV Limited. The BLC's reasons for this decision are set out below.

Background

Ofcom awarded BLTV the Licence on 6 November 2012 according to the statutory criteria in the Broadcasting Act 1996 ("the 1996 Act") for licensing local television.² There were four applications in total for the Licence. The Licence was awarded on the basis of the Programming Commitments proposed by BLTV. These are set out in the annex to the Licence which was granted to BLTV on 9 June 2014.³

On 8 August 2014 Ofcom was informed that BLTV had been placed into administration and that Duff & Phelps Ltd. had been appointed Administrators of BLTV following a High Court hearing. Ofcom received the transfer request which is the subject of this decision statement from Duff & Phelps on 23 September 2014. This followed an earlier request from the Administrators which Ofcom rejected on 16 September 2014.

Statutory Framework

Under the 1996 Act, an L-DTPS is not transferable to any other person without Ofcom's previous consent in writing.⁴ Ofcom must not give its consent unless it is satisfied that the person or persons to whom it is proposed to transfer the licence would be in a position to comply with all of the conditions included in the licence which would have effect during the period for which it is to be in force.⁵

Condition 21 of the Licence reflects these statutory requirements⁶.

In deciding whether or not to transfer an L-DTPS in accordance with the statutory requirements, Ofcom must consider all the particular circumstances of the request, taking account of the fact that the Licence was awarded following a competitive process according to the statutory criteria for awarding local television licences under the 1996 Act, as amended by the Local Digital Television Programme Services Order 2012⁷.

¹ <http://www.ofcom.org.uk/about/how-ofcom-is-run/committees/broadcast-licensing-committee/>

² The BLC's award decision can be found here: <http://licensing.ofcom.org.uk/binaries/tv/local-tv/applicants/Birmingham.pdf>

³ Condition 5(1) of the Licence requires BLTV to maintain the character of the Licensed Service for the duration of the Licence in accordance with the Programming Commitments.

⁴ Section 3(6) of the 1996 Act

⁵ Section 3(7) of the 1996 Act

⁶ <http://licensing.ofcom.org.uk/tv-broadcast-licences/current-licensees/local-tv/birmingham>

⁷ <http://www.legislation.gov.uk/ukxi/2012/292/contents/made>

In particular, this includes assessing whether the proposed transferee would be able to meet all the Programming Commitments in the licence. The Programming Commitments in the Birmingham L-DTPS are annexed to this statement.

Ofcom Decision

The Ofcom Board has delegated the discharge of certain of its functions in relation to television and radio broadcast licensing to the BLC which is chaired by a member of the Ofcom Board. The BLC has responsibility for deciding on the award of, and proposals for significant variations to, L-DTPS licences.

The BLC met on 17 November 2014 to consider the request to transfer the Licence.

The BLC carefully considered all the information that had been submitted to Ofcom and noted at the outset the assurances that had been made in terms of the ability of the proposed transferee to deliver the Programming Commitments and its readiness to launch the service.

The BLC went on to consider the Proposal against these assurances. It started by assessing the evidence relating to the proposed transferee's ability to deliver the Programming Commitments in the Licence.

The BLC noted that, under the Proposal, the hours of local programming per week would exceed the minimum hours per week required under the Programming Commitments in the Licence. The BLC also noted from the indicative schedule that it appeared that there would be more first-run local programming in peak-time than required under the Licence. The BLC next considered the commitments in the Proposal relating to the description of programming output in the Licence. These features of the Programming Commitments in the Licence were a significant and important reason for the original licence award.

After careful consideration, the BLC was satisfied that the Proposal sufficiently demonstrated that the proposed transferee would meet all the Programming Commitments, including the specific requirements in the section headed "Programming Output". In particular, the BLC noted the specific assurances that had been given relating to live news coverage and to the delivery of hyper-local news involving local partnerships and arrangements with local studios, which the proposed licensee undertook would be formalised and further developed should Ofcom consent to the licence transfer.

The BLC considered the financial position of the proposed transferee and its business plan, in order to be satisfied it could launch and sustain the service.

The BLC considered that the business plan put forward was sustainable for the Birmingham licence, subject to the initial funding being raised. Following clarifications from the Administrator, the BLC was satisfied that the proposed transferee would have the initial funds required to launch the service.

Being satisfied that the proposed transferee would be in a position to comply with all the conditions of the Licence, the BLC went on to consider whether it was appropriate for Ofcom to consent to the transfer request.

The BLC took into account Ofcom's general duties to citizens and consumers and in particular the interests of viewers in Birmingham. The BLC took account of the likely timetable if Ofcom were to revoke and re-advertise the licence. The BLC noted that a

successful applicant would have up to two years following the award of a new licence before it would be required to commence broadcasting.

Weighing up all these factors and after careful deliberation, the BLC decided on balance that it would be in the interests of citizens and consumers in Birmingham to consent to this transfer request.

Commencement Date

The BLC was mindful of the time taken by Ofcom in considering the Proposal and carrying out the necessary due diligence and noted that this had led to Ofcom extending the Commencement Date of 3 November 2014 on an interim basis to 15 December 2014 while Ofcom considered the request. The BLC also noted that a further short extension would be required to give Kaleidoscope TV Limited time to launch the service.

To account for the delay resulting from Ofcom's consideration of the request Ofcom has decided to allow Kaleidoscope up to 28 February 2015 to launch the service.

Next steps

The licence transfer will be processed by Ofcom and the re-issued licence published. Kaleidoscope TV Limited is required to begin broadcasting on the new Commencement Date.

Contact details for the new licensee, Kaleidoscope TV Limited are as follows:

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Annex: Programming Commitments

Programming Commitments for City TV Birmingham			
Programming output	<ul style="list-style-type: none"> The service will focus on core news and current affairs output in the initial period of operation. The service will be as inclusive as possible, forming partnerships with communities to deliver hyper local news coverage. Producers from the community will be trained to deliver content about their areas on an ongoing basis. Resource and airtime will be provided to hear the voices of these communities. News bulletins will be live with as many live links to events around the Licensed Area as possible. The proportion of daytime and evening feature led and factual/entertainment programming will increase and repeats will be reduced once the core news and current affairs schedule is established. <p>The service's programme schedule will include:</p> <ul style="list-style-type: none"> a 90-minute breakfast show; news at 12.00; a business round up, news and analysis at 12:30; a half-hour programme of news at 18:00 and at 22:00; and 5 x 2 minute round ups of news headlines across the day. 		
Hours of local programming per day/week	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3 onwards</u>
First run:	41 hours per week	55 hours per week	68 hours per week
Repeats:	40 hours per week	30 hours per week	23 hours per week
Hours of local programming per day/week in peak-time (18.00-22.30)	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3 onwards</u>
First run:	23 hours per week	23 hours per week	23 hours per week
Repeats:	4.5 hours per week	4.5 hours per week	4.5 hours per week
Hours and scheduling of local news and current affairs programming	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3 onwards</u>
First run:	Mon-Sun: 27 hours of news and current affairs per week. This includes 5 x 2 minute bulletins per day.	Mon-Sun: 35 hours of news and current affairs per week. This includes 5 x 2 minute bulletins per day.	Mon-Sun: 38 hours of news and current affairs per week. This includes 5 x 2 minute bulletins per day.
Repeats:	Mon-Sun: 3 hours	Mon-Sun: 2 hours	Mon-Sun: 1 hour