LONDON
ALL LONDON – ALL THE TIME

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

25th August 2014

Dear Sirs,

ESTV Limited ("ESTV")
Local-Digital Television Programme Services Licence ("Licence")
Ofcom's Broadcasting Licensing Committee ("BLC")
Application for proposed change to the Local-Digital Television Programme Services Licence for London granted in favour of ESTV Limited ("the Changed Licence")

As you are aware, London 8 Limited was one of five applicants considered for the award of a Licence for London. London 8 Limited was the next preferred applicant after ESTV.

We write in response to Ofcom's 'Notice of proposed change to L-DTPS licence obligations of ESTV (the local TV licence for London)', which Notice was published on 25 July 2014 with a deadline for response of 26 August 2014.

London 8 Limited is an interested party in respect of whether Ofcom should allow changes to be made to ESTV's Programming Commitments under the Licence and therefore whether ESTV should be granted the Changed Licence.

Representations and objections

In its application to Ofcom for proposed changes to the Licence, ESTV seeks to make changes to the programming provided under the Licence and to reduce the daily number of hours of local content required to be provided.

In its application of July 2014 ESTV seeks the following changes:-

a) so far as programming output is concerned ESTV will **endeavour** to be an interactive and entertainment service, rather than **be** an interactive news and entertainment service;

b) as regards hyper-local programming, that ESTV will, **where available**, include hyper-local programming delivered through 33 digital platforms in the Boroughs and the City of London;

c) to reduce the number of hours of local programming per day from 10 hours to 8 hours per day; and

d) to reduce the number of hours of first run, peak time, local programming from 3 hours to 1 hour per day for the full period of the Licence.

London 8 objects to each and every part of these proposed changes. Should those changes be allowed, the consequence/result of same will be that ESTV and London Live no longer delivers a **local** television programme service. The character of the London Live service would become substantially altered.

Of particular concern is:-

b) ESTV's proposal to deliver hyper-local programming only **where available**.

One of the two principal reasons for ESTV being awarded the Licence (rather than London 8 or the other 3 applicants) resulted from ESTV's commitment to facilitate close local involvement in programming, particularly through IPTV (online television) content. In that regard, ESTV stated the following in their application that (reference to page number relates to page numbers in ESTV's application):-

- they would provide a new interactive TV service that actively engages Londoners in the creation and delivery of local news (page 6);
- they would provide complementary Hyper-Local IPTV services which delve into local information, needs and issues (page 6);
- London Live will set up and run 33 complementary IPTV streams – one for each borough and one for the City of London containing extensive local coverage (page 7);
- in contrast to Community TV initiatives, London Live will provide Hyper-Local programming - a new granularity of content available to Londoners (page 14);
- London Live Hyper-Local IPTV services will ensure that an even greater variety of tastes can be catered for by delivering content that is relevant to people living in specific areas (page 21); and
- the IPTV ambition can be realised, with the potential to turn the 33 local feeds from London Live into more sustainable granular entities that are valuable to local business, residents and service providers (page 28).

The term "where available" is impossible to test and measure. If such a change of wording was allowed the result would be that ESTV is not formally committed to deliver IPTV, the very service they stated set them apart from the other applicants. Furthermore, it was ESTV's commitment to IPTV that was stated by Ofcom as being a defining reason for licence award.

Such a commitment would be further watered down if the overarching commitment to **being** an interactive news and entertainment service was allowed to be changed to an intangible **endeavour** to do so, as proposed in change (a).

In this regard, it should also be borne in mind that ESTV does not, even at present, deliver 33 Hyper Local and complementary IPTV streams with the promised extended coverage and, as such, is already in breach of its commitments. For the majority of IPTV streams delivery and content is often not hyper-local or current and is sporadic.

d) ESTV's proposal to reduce the number of hours of first run, peak time, local programming from 3 hours to 1 hour per day for the full period of the Licence.

ESTV's commitment to provide a minimum 3 hours first run, peak time, local programming per day reflected a commitment to deliver at least that level of content, not less. That minimum was due to increase to at least 3.5 hours (i.e. over 75% of peak time programming) in the coming years. Allowing ESTV to reduce its commitment to deliver just 1 hour per day would mean that, out of 4.5 hours of peak time broadcasting, local content would makes up less than 25% of peak hours. ESTV's overall commitment to delivering local content would be further watered down if the Licence was changed so that ESTV only has to deliver 8 out of 18/24 hours of local content per day (i.e. less than 45% of total content per day).

If such a change to peak time and total hours commitment is allowed it will substantially alter the character of the service to the extent that the service being delivered would, to all intents and purposes, have lost its local character.

In considering whether to grant the Changed Licence, Ofcom should also bear in mind the criteria that governs grant of a Licence:-

- a commitment to deliver a service that meets the needs of the area or locality, a service that (a) will bring social/economic benefits to the area and caters for the tastes, interests and needs of those living in that locality and (b) reflects the lives and concerns of community and cultural interests and concerns of the community and cultural interests and traditions in the area/locality;

- a commitment to provide a service that is likely to broaden the range of programmes available for viewing by persons living and working in that area or locality; and

- the ability of the Licence holder to maintain the proposed service throughout the period that the Licence is in force.

In March 2014, without seeking consultation, Ofcom allowed the Licence to be changed to remove ESTV's commitment to provide half hourly and hourly bulletins. We believe that consultation on same should have been sought before that change was allowed.

If Ofcom grant ESTV's current application, London 8 Limited intend to seek judicial review of both the March and July 2014 applications.

Requirements incumbent on Ofcom in evaluating applications for local licences

Section 18 (6) of the Broadcasting Act 1996 (as amended) outlines the factors Ofcom must consider in determining whether and to whom to grant a L-DTPS licence, as follows:-

a) the extent to which any proposed service:

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

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

Given this criteria, it is clear that, if ESTV's original Licence was sought on the basis of the amended commitments they now seek to make, the Licence would not have been granted to them. As such, we do not believe that Ofcom should allow this change to the ESTV local TV licence.

Yours faithfully

Guy Hornsby
for and on behalf of
LONDON 8 LIMITED