



Principles for setting licence fees and administrative charges

Review of Ofcom's Statement of Charging Principles
Preliminary Consultation

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Section 1

Introduction

Summary

- 1.1 Under the Communications Act 2003 (“the Act”), Ofcom is required to set licence fees in the broadcasting sector and administrative charges in the electronic communications sector in accordance with charging principles that it has published.¹ There are similar provisions in the Postal Services Act 2011 in relation to the setting of charges for the postal services sector.² On a year on year basis, such charges and fees must be set so as to meet but not to exceed Ofcom’s annual costs of regulating the relevant sector.³
- 1.2 In setting charges and fees, we must ensure that they meet the relevant statutory requirements, including that they are objectively justified, proportionate and transparent.
- 1.3 In 2005, we published our current statement of charging principles applying to the TV, radio and electronic communications (“networks and services”) sectors (the “2005 SoCP”).⁴ In 2012 we published a statement of charging principles for the postal services sector (the “2012 SoCP”).⁵
- 1.4 This means we have experience of applying the charging principles for 10 years to TV, radio and networks and services sectors, and for 2 years to the postal services sector. During this time, all these sectors have experienced market and regulatory change. Therefore, whilst the current statements fulfil their statutory and operational purposes, it is now an appropriate juncture to review our charging principles and their application to ensure that they continue to do so in the future. We would also like to combine the current statements into one statement covering all the regulated sectors.
- 1.5 Our review of the current statements will be carried out in two stages. This consultation is the first stage and is preliminary. Its purpose is to:
- set out the criteria which we consider our charging principles should, as far as possible, seek to meet;
 - identify issues for consideration; and
 - ask stakeholders for their views on the identified issues.
- 1.6 The second stage of the consultation process will consider the views from stakeholders that we receive and incorporate them, as appropriate, into our analysis. We expect this to result in a second consultation document, setting out our proposals and the analysis which underpins them in more detail. We shall not make final decisions on the issues set out in this document until after the second consultation process is complete.

¹ Sections 38(3), 347(1) of the Communications Act.

² Section 43(2) Schedule 4 of the Postal Services Act 2011.

³ Ofcom’s charging year runs from 1st April to 31 March.

⁴ <http://stakeholders.ofcom.org.uk/binaries/consultations/statement-charging-principles/statement/Statement-final.pdf>

⁵ <http://stakeholders.ofcom.org.uk/consultations/post-socp/statement>

1.7 We seek responses to this preliminary consultation by 19 June 2014.

Funding background and scope of review

1.8 Ofcom raises its funds from a number of sources including:

- TV broadcasting licence fees;
- Radio broadcasting licence fees;
- Administrative charges for electronic communications networks and services and associated facilities;
- Administrative charges for services within the scope of the universal postal service; and
- Grant-in-aid from central Government. The grant-in-aid covers the costs of regulating and managing the wireless spectrum. It also covers those statutory functions and duties that Ofcom must discharge but for which Ofcom has no power to charge stakeholders (for example, the statutory public interest test for media mergers, media literacy and ex-post Competition Act investigations).

1.9 Spectrum licence fees are set under a different statutory scheme and are collected by Ofcom and then passed, via the Department of Culture, Media & Sport, to the Government. They are not within the scope of this review.

1.10 There are also a number of other fees and payments within the TV sector which we do not intend to examine in our review - namely in relation to:

- Local TV (in 2012, Ofcom was asked to licence a new generation of local television services, and set out fees for certain services as part of 'The Licensing Local Television' – Statement, and so we do not intend to review them again at this time.
<http://stakeholders.ofcom.org.uk/binaries/consultations/localtv/statement/local-tv-statement.pdf>);
- Restricted Television Service Licences (during 2013, the final licences are due to end and there are no renewals or new applications);
- BBC and S4C (the Act makes separate provision for the funding of the regulatory costs for these stakeholders. Their fees are not set in accordance with the Statement and are instead set as agreed between each of them and Ofcom); and
- ATVOD services (Ofcom designated ATVOD to carry out a range of functions in relation to on demand programme services including the setting of regulatory fees).

Section 2

Tariff criteria

2.1 The principal objectives of this review of the Statements of Charging Principles are to:

- continue to ensure the effective collection of our funding requirements with the minimum administrative burden on stakeholders; and
- set charges in a fair and equitable manner, in accordance with our statutory duties.

2.2 We set out below a number of criteria which we consider fees and charges set in accordance with our charging principles should, as far as possible, seek to meet. These are based on those set out in the consultation on our charging principles in 2004⁶ as we consider they are still relevant and useful. We have added harmonisation to these original criteria to take account of the current sector characteristics and market developments such as convergence. The criteria are:

- **Fairness and equity:** the charging structure should raise Ofcom's required funding across the regulated sectors in a manner which is fair and equitable;
- **Simplicity and transparency:** charges should be as simple and as clear as possible for stakeholders, and wherever practicable use data that stakeholders would anyway gather for their own management purposes. Charges should also be relatively simple to administer for Ofcom;
- **Cost-reflective:** Ofcom is required to ensure that revenues from each individual sector meet the costs of regulation for that sector. Furthermore, we also seek to ensure, so far as possible, that charges should broadly reflect the underlying cost of regulating each type of licence or regulatory activity within the sectors where such category types exist;
- **Verifiable:** the information required for the setting of charges should be easily verifiable to ensure industry-wide compliance;
- **Adaptable:** charging principles and structures should be capable of adapting to a changing market environment and be consistent with wider policy;
- **Relevance:** charges should be based on an operator's activities that flow from the licence or authorisation, but only those activities;
- **Reliability:** the charging base should be stable over time, and not prone to erratic movements. Charges should not move substantially each year so long as the overall regulatory costs for that sector remain steady; and
- **Harmonisation:** the harmonisation of fee setting methods across the sectors, where it is practicable to do so, can help to ensure consistency and simplification, especially in an increasingly convergent communications industry.

⁶ http://stakeholders.ofcom.org.uk/binaries/consultations/licence_admin_fee/licence_admin.pdf

2.3 In the following section, we set out the issues which we propose to consider in reviewing our charging principles. The criteria above underpin the issues we have identified.

Section 3

Issues for consideration

3.1 This section discusses, sector by sector, the issues we have identified as appearing to merit review as a result of regulatory and market changes. We have also identified some issues which relate to more than one regulatory sector and these are considered at the end of this section. We have posed questions for each of the issues we have identified and we welcome your response to these.

Accordingly, this section is divided into the following sub-sections:

- Postal services
- TV
- Radio
- Networks and services
- General

Postal services

3.2 Ofcom took over responsibility for the regulation of the postal sector on 1 October 2011. Because of the short timeframe and information available to Ofcom at that time for determining its approach to recovering its costs of regulating the sector, the 2012 SoCP adopted the charging principles in place under the previous regulatory regime, subject to some amendments to bring the statement into line with the Postal Services Act 2011 (rather than referring to the old licensing regime). However, we signalled in the 2012 SoCP that we would reconsider the following issues in the next review of the statement:

- services within the scope of the universal postal service for which charges are payable;
- the treatment of turnover from access services; and
- the minimum relevant turnover threshold and threshold options.

Chargeable postal services

3.3 The 2012 SoCP states that administrative charges are payable by postal operators that provide letter services which generate turnover exceeding £10 million in the relevant year. For the purpose of the turnover calculation, turnover from access services, express services (i.e. guaranteed next day delivery) and premium services is excluded. Access services are defined as the conveyance and delivery of letters to the universal service provider (i.e. Royal Mail) for onward conveyance and delivery by the universal service provider.⁷ Premium services are defined as any postal service including additional features which are paid for, such as recorded delivery, insured delivery and tracked items.

⁷ The provision of access services enable postal operators to offer letter postal services to larger business customers in competition with Royal Mail without setting up a delivery network.

3.4 As part of our review, we seek views from stakeholders on whether the calculation of turnover from letter services as set out above should be amended. More specifically, we invite views on whether we should:

- continue to base contributions on standard letter service revenues, and continue to exclude packets, parcels, and premium letter services;
- include turnover from access services within the calculation, and if so on what basis; and
- remove tracked items from the list of examples in the definition of premium services so that turnover from these services is also taken into account.

3.5 Whilst parcel, packet and premium letters services fall within our area of regulatory responsibility, to date they have not been subject to substantive regulation. The only obligation currently applying to postal operators providing these services is Consumer Protection Condition 3, which requires all postal operators to have complaint handling processes. Given that these services are only subject to minimal regulation it may not be proportionate for turnover which is generated from them to be used in setting fees and charges. It is our initial view therefore that the current position should be maintained whereby turnover from packet, parcel and premium letter services is not taken into account in the calculation of turnover from letter services for the purposes of administrative charging. We discuss the scope of the definition of premium services separately in paragraph 3.7 below.

3.6 Access has been the predominant form of competition in the UK since the first access contract was signed in 2004. In 2012/13 access services accounted for 47% of total mail volumes. Royal Mail is subject to a regulatory condition to continue to offer access to its inward mail centres for letters and large letters. Further, access operators are the only postal operators entitled to bring disputes to Ofcom under the Postal Services Act 2011. We also monitor (and where necessary enforce) Royal Mail's compliance with its access obligations. Therefore, access services are subject to and benefit from regulation to a significant degree, and contribute significantly to some of our regulatory costs in relation to the postal sector. This suggests that on grounds of relevance and cost-reflectiveness, there may be a case for taking turnover from access services into account for the purposes of administrative charging. We discuss in paragraphs [3.8 – 3.9] below how we might treat turnover from access services, were it to be included within the calculation.

3.7 With regard to tracked end-to-end letters, we would be interested in stakeholders' views on whether these should still be cited as an example of a premium service. We note that TNT Post UK now provide end-to-end letter services, which includes tracking as standard. If tracking is also a standard feature of bulk mail services for which no additional charge is made, it does not appear appropriate to retain it as an example in the definition of a premium service. Further, if this is the case, turnover generated from tracked end-to-end letter services would then be included in the calculation of turnover for charging purposes.

Q1. What are your views of the basis on which turnover from letter services is currently calculated for the purposes of administrative charges? In particular, would it be appropriate to include turnover from access services within the calculation? Please provide reasons for your views.

Q2. Is tracking now a standard feature of letter services so that it should be removed from the current definition of premium services? Please provide reasons for your views.

The treatment of turnover from access services

- 3.8 If turnover from access services were to be taken into account for the purposes of administrative charging, we would need to establish the basis on which it should be calculated. Our provisional view is that there appear to be two alternative options – a gross revenue calculation or a net revenue calculation.
- 3.9 Turnover calculated on the basis of gross revenues would take account of the postal operator's total revenue from the provision of the access services. Turnover calculated on the basis of net revenues would allow for the deduction of payments to Royal Mail (access charges). The margins typically earned from access services by postal operators competing with Royal Mail are relatively narrow and therefore, applying the fairness criterion, the calculation of turnover from these services on a net basis may be more appropriate. To illustrate using an example, if an access operator makes £100m gross revenue from the provision of access services and pays £98m access charges to Royal Mail then, their net revenue is £2m.

Q3. Do you think that turnover from access services, if taken into account for the purposes for administrative charging, should be calculated on the basis of gross revenue or on the basis of net revenue (after the deduction of access charges to Royal Mail)? Please provide reasons for your view.

Minimum relevant turnover threshold

- 3.10 Postal operators are not subject to administrative charges unless they meet the minimum turnover threshold, namely generating annual turnover from letter services (as defined) in excess of £10 million. When drafting the 2012 SoCP it was our objective to keep the general effect of the previous (Postcomm) charging regime until we had an opportunity to review it. The current minimum turnover threshold of £10m was one of such features which we maintained. However it was noted in the consultation on the 2012 SoCP that this level was high in relation to that set for the network and services sector (£5m). Given this review, we consider it is now appropriate to review the threshold level and options for applying administrative charges.

Q4. Is the minimum turnover threshold of £10 million from the provision of letter services still appropriate? If you consider it should be raised or lowered, please specify the threshold you consider would be more appropriate and why.

TV

- 3.11 We consider the following issues in this sector merit examination:
- progressive versus linear charging rates in the setting of licence fees for Category A and Category B TV broadcast licensees;⁸

⁸ Category A licences are the licences for: Channel 3, Channel 4, Channel 5, Local Digital TV Programme Service and TV Licensable Content Service where the content in question is simulcast. Category B Licences are licences for: TV Licensable Content Service (other than those licences for simulcast content with Category A), Digital TV Programme Service, Commercial Additional TV Services, and Digital TV Additional Service.

- whether we should retain a £300m maximum cap on relevant turnover for Category A and Category B TV broadcast licensees, above which no charging rate applies; and
- fees for licence variations and transfers.

3.12 As noted at paragraph 1.10, we do not intend to include the fees charged to local TV licensees within the scope of these issues which we are proposing to review at this time.

Progressive versus linear rates

3.13 In the TV sector, licence fees paid by for Category A and Category B TV broadcasters are calculated on the basis of a progressive charging structure. This involves charging licensees a higher fee the greater their relevant turnover, thus reducing the financial impact on smaller operators.

3.14 The 2013/14 relevant turnover bands and associated charging rates for the calculation of Category A and Category B TV broadcast licence fees are shown in the table below:

Table 1: 2013/2014 Charging rates for Category A and B TV broadcasting licence fees

Relevant Turnover		Category A Charging rate	Category B Charging rate
Bands			
£0m	- £10m	0.12420%	0.02919%
£10m	- £35m	0.18630%	0.05845%
£35m	- £75m	0.27945%	0.11689%
£75m	- £300m	0.41917%	0.23377%
Over	£300m	0.0%	0.0%

3.15 Licence fees are calculated on a cumulative basis. For example, a Category A licence with £400m of relevant turnover will be charged a total fee of £1,113,904 calculated on the basis of the sum of:

- 0.12420% on the first £10m of turnover (£12,420)
- 0.18630% on the next £25m of turnover (£46,575)
- 0.27945% on the next £40m of turnover (£111,779)
- 0.41917% on the next £225m of turnover (£943,130)
- 0% on the remaining £100m of turnover (£0).

3.16 Under this methodology, the rates at which licence fees are charged increase the higher up the banding scale in which relevant turnover falls. The result of such an approach is that a greater proportion of the total regulatory cost of the sector is charged to those broadcasters with relevant turnover in the higher bands.

- 3.17 Progressive banding scales were adopted to minimise the risk of a regulatory charge changing the operation of the market by acting as a ‘barrier to entry’ for new entrants (by reducing the financial impact on smaller operators compared to the impact on larger, more established operators).
- 3.18 However, it is also the case that fairness and equity may not necessarily be maximised under progressive banding if it results in some stakeholders paying a disproportionate share of regulatory costs relative to their market position.
- 3.19 In the case of the TV broadcasting licensees, the bands are applied to relevant turnover generated per licence, rather than by aggregating turnover where a licensee holds more than one licence. This can result in some apparent anomalies. To illustrate using a hypothetical example, licensee Y and licensee Z each hold multiple TV broadcasting licences and, in respect of all their licences, each make a total relevant turnover submission of £400m and £450m respectively. Due to the spread of this revenue across their licences, the fees they are each charged are as follows (using the 2013/14 category A charging rates):

Licensee Y

Relevant turnover band	Number of licences in turnover band	Total relevant turnover in band	charging rate	Fee charged
£0m - £10m	20	£200,000,000	0.12420%	£248,400
£10m - £35m	4	£100,000,000	0.18630%	£186,300
£35m - £75m	2	£60,000,000	0.27945%	£167,670
£75m - £300m	1	£40,000,000	0.41917%	£167,668
Total	27	£400,000,000		£770,038

Licensee Z

Relevant turnover band	Number of licences in turnover band	Total relevant turnover in band	charging rate	Fee charged
£0m - £10m	25	£250,000,000	0.12420%	£310,500
£10m - £35m	6	£150,000,000	0.18630%	£279,450
£35m - £75m	2	£50,000,000	0.27945%	£139,725
£75m - £300m		£0		£0
Total	33	£450,000,000		£729,675

- 3.20 Despite licensee Z’s total relevant turnover being 12.5% higher than that of licensee Y, licensee Y’s total fee is 5.2% higher.
- 3.21 An alternative approach would be to adopt a linear annual fixed percentage rate.⁹ The following table uses a hypothetical linear charging rate of 0.25558% and shows

⁹ The actual value of the new single annual fixed rate will be determined by the relative value of aggregate relevant turnover and the amount of costs we have to recover from the TV sector in a

that both licensees will pay the same percentage for each pound of relevant turnover, regardless of how many licences they hold and how turnover is spread across them.¹⁰ This approach may also result in a fairer and more equitable allocation of costs. Applying this methodology, licensee Z's fees are 12.5% higher than those of licensee Y, which is directly in line with the differential between their respective turnovers.

Licensee Y

Relevant turnover band	Number of licences in turnover band	Total relevant turnover in band	charging rate	Fee charged
£0m - £10m	20	£200,000,000	0.25558%	£511,160
£10m - £35m	4	£100,000,000	0.25558%	£255,580
£35m - £75m	2	£60,000,000	0.25558%	£153,348
£75m - £300m	1	£40,000,000	0.25558%	£102,232
Total	27	£400,000,000		£1,022,320

Licensee Z

Relevant turnover band	Number of licences in turnover band	Total relevant turnover in band	charging rate	Fee charged
£0m - £10m	25	£250,000,000	0.25558%	£638,950
£10m - £35m	6	£150,000,000	0.25558%	£383,370
£35m - £75m	2	£50,000,000	0.25558%	£127,790
£75m - £300m		£0		£0
Total	33	£450,000,000		£1,150,110

- 3.22 A single annual fixed rate method of calculating fees may allow stakeholders to better understand how changes in their relevant turnover correlate with their annual fees. It could also promote harmonisation across sectors as this is currently the charging method adopted in the postal services sector; we are also proposing to consider its introduction in the radio¹¹ and networks and service sector.¹²

Q5. What are your views on adopting a linear charging rate rather than progressive charging rates and why?

charging year. We will continue to deduct any fixed fee income from our overall target costs recovery amount for the sector where the interplay between fixed and variable fees is illustrated.

¹⁰ An alternative method of calculating the fees payable by both licensees using a linear charging rate, is to apply the illustrative charging rate of 0.25558% on the aggregate turnover. For example licensee Y's fee can be calculated as 0.25558% of £400,000 which is £1,022,320.

¹¹ See 3.32 - 3.36 below.

¹² See 3.40 – 3.45 below.

Relevant turnover ceiling

- 3.23 The 2005 SoCP sets a cap of £300 million on the relevant turnover that is taken into account for the purpose of calculating Category A and Category B TV broadcasting licence fees. This relevant turnover ceiling of £300m was designed to mitigate the distortions which might otherwise result from the fees charged to a licensee holding a single licence (or a minimal number of licences) generating turnover above that threshold compared to the position of a licensee generating an equivalent turnover but across several licences. To illustrate using a hypothetical example, Licensee W and Licensee X both have relevant turnover of £400m but Licensee W holds 1 licence and Licensee X holds 4 licences. The fees they are each charged for illustrative purposes are as follows (using the 2013/14 category A charging rates):

Licensee W (1 Licence)

Relevant Turnover Band	Total relevant turnover in band	charging rate	Fee charged
£0m - £10m	£10,000,000	0.12420%	£12,420
£10m - £35m	£25,000,000	0.18630%	£46,575
£35m - £75m	£40,000,000	0.27945%	£111,780
£75m - £300m	£225,000,000	0.41917%	£943,133
Over £300m	£100,000,000	0.00000%	£0
Total	£400,000,000		£1,113,908

Licensee X (4 Licences)

Relevant Turnover Band	Number of licences in turnover band	Total relevant turnover in band	charging rate	Fee charged
£0m - £10m	4	£40,000,000	0.12420%	£49,680
£10m - £35m	4	£100,000,000	0.18630%	£186,300
£35m - £75m	4	£160,000,000	0.27945%	£447,120
£75m - £300m	1	£100,000,000	0.41917%	£419,170
Over £300m	0		0.00000%	£0
Total (4 licences)		£400,000,000		£1,102,270

- 3.24 However, if there were no £300m relevant turnover ceiling, the charging rates within each progressive turnover band would change as there would be more relevant turnover liable for charging. The following hypothetical example assumes the same relevant turnover as above for both licensees W and X and uses illustrative charging rates. In this scenario, the fees applicable would be:

Licensee W (1 Licence)

Relevant Turnover Band	Total relevant turnover in band	charging rate	Fee charged
£0m - £10m	£10,000,000	0.10000%	£10,000
£10m - £35m	£25,000,000	0.15000%	£37,500
£35m - £75m	£40,000,000	0.22500%	£90,000
Over £75m	£325,000,000	0.33750%	£1,096,875
Total	£400,000,000		£1,234,375

Licensee X (4 Licences)

Relevant Turnover Band	Number of licences in turnover band	Total relevant turnover in band	charging rate	Fee charged
£0m - £10m	4	£40,000,000	0.10000%	£40,000
£10m - £35m	4	£100,000,000	0.15000%	£150,000
£35m - £75m	4	£160,000,000	0.22500%	£360,000
Over £75m	1	£100,000,000	0.33750%	£337,500
Total (4 licences)		£400,000,000		£887,500

- 3.25 The examples above show that Licensee W would pay a materially higher fee in comparison with Licensee X (even though both have the same aggregate relevant turnover) if the relevant turnover ceiling was not in place.
- 3.26 If the charging structure were to change to a linear one, the risk of the type of distortions discussed in paragraph 3.22 would not emerge as each licensee would be charged the same percentage for each pound of relevant turnover, regardless of the number of licences owned or the spread of revenue across them. However, if the progressive charging structure is retained, it appears appropriate to review the level of the ceiling as it was set in 2005. Since then the sector has changed considerably and there are significantly fewer individual licences generating relevant turnover above the £300m cap.

Q6. What are your views on the relevant turnover ceiling? Is there a case for its removal or do you think the level at which it is set should be changed? Please provide reasons for your views.

Minimum fees

- 3.27 Currently, where the annual relevant turnover of a Category A or Category B TV broadcast licensee generates a fee of £1000 or less, we charge a minimum fee of £1,000, for reasons of efficient administration. As discussed at paragraphs 3.51 – 3.63, we are minded to review the basis on which we set fixed fees and welcome your views. We propose to include the minimum TV broadcast licence fee for Category A and Category B licensees (other than local TV licensees and Restricted Television Service licensees) within any such review.

Variations and transfer fees

- 3.28 One of the objectives of our review is to ensure we are applying our principles consistently to similar processes across sectors. We have identified some inconsistencies in the fees we charge for variations and transfers of TV licences compared to our charging practice in the radio sector.
- 3.29 We currently charge the TV sector for transfer and variation fees in addition to the annual licence fees they pay but this is not the case in the radio sector where the cost of these processes is recovered via the annual licence fees charged to radio broadcasters. The work we carry out in relation to licence variations and transfers is similar in both sectors, and therefore it would be worth examining whether we should adopt a common approach in relation to the recovery of these regulatory costs.

Q7. What are your views on harmonising our approach to recovering our regulatory costs of licence variations and transfers in the TV and radio sectors? Do you have a preference for recovering these costs through separate fees or via the annual broadcasting licence fees that we charge? Please provide reasons for your views.

Change of control fees

- 3.30 There are specific statutory provisions in the Communications Act 2003 (sections 351-354) which require Ofcom to carry out a review when there is a change of control in respect of a Channel 3 or Channel 5 licence. Although infrequent, such a process results in additional regulatory costs. Accordingly, the cost-reflectiveness criterion suggests that it may be appropriate to impose a separate fee on the licensee concerned in respect of this function.

Q8. What are your views on setting a specific fee for change of control of a Channel 3 or Channel 5 licence?

Radio

- 3.31 We consider the following issues in this sector merit examination:
- progressive versus linear charging rates in the setting of licence fees; and
 - fees for licence variations, transfers and for changes of control of radio licensees; and
 - *de minimis* threshold

Progressive versus linear charging rates in the setting of licence fees

- 3.32 As with the TV sector, radio licence fees are set on a progressive basis, in the sense that, the higher the relevant turnover band, the higher the charging rate. The 2013/14 bandings and charging rates for radio licence fees are shown in the following table:

Table 2: 2013/14 National and Local Radio Broadcasting Licence Fees

Relevant Turnover Bands	Tariff for 2013/14 % of Relevant Turnover
£0m - £1m	0.139%
£1m - £5m	0.209%
Over £5m	0.313%

- 3.33 Unlike the TV sector, the relevant turnover bands in the radio sector are not cumulative, for example a licence with £0.9m relevant turnover will have the whole £0.9m charged at 0.139%, whilst a licence with £1.2m relevant turnover will have the whole £1.2m charged at 0.209%. There is also no maximum turnover cap so that all relevant turnover generated from the holding of a radio licence will be taken into account in the calculation of the fee. Both these characteristics of the charging structure were inherited from the legacy regulator of the radio sector (the Radio Authority)
- 3.34 As with TV licence fees, progressive banding scales were adopted to minimise the risk of a regulatory charge changing the operation of the market by acting as a 'barrier to entry' for new entrants. And like the TV sector, it may result in some stakeholders paying a disproportionate share of regulatory costs relative to their market position. That will be the case, for example, where two stakeholders generate the same relevant turnover in total but one does so from multiple licences while the other does so from only one. The former is charged separate fees in relation to each licence on the basis of turnover falling with these lower bands, while the latter will pay a single, higher fee calculated on the higher rate applying to turnover in the upper band.
- 3.35 We are therefore proposing to consider whether it would be better to adopt a single annual fixed percentage rate for the calculation of radio licence fees which, as noted previously, is the current approach used in the postal services sector. The application of a fixed percentage rate would result in all radio licensees paying the same percentage for each pound of relevant turnover, regardless of how many licences they hold and how turnover is spread across them.
- 3.36 Alternatively, if the progressive charging structure were to remain, we also propose to consider whether the current methodology used for calculating Category A and Category TV broadcasting licence fees should be adopted in the radio sector, i.e. the relevant turnover bands are cumulative and a maximum turnover cap is introduced. This would not only promote harmonisation in the broadcasting sectors, but may also lead to a fairer and more equitable distribution of fees. Using the example in paragraph 3.33, both stakeholders, regardless of the number of licences held, will benefit from lower charging rates in the lower charging bands as a result of the progressive scales.

Q9. What are your views on adopting a linear charging rate rather than a progressive charging rate for the calculation of radio licence fees? If your preference is for a progressive charging rate, please indicate whether this should be structured in a similar way to the current progressive charges for TV broadcast licensees.

Fees for licence variations, and transfers

3.37 This issue is discussed in paragraphs 3.28 and 3.29. Stakeholders are invited to respond to the questions posed there in relation to our current practice of not charging these fees to radio licensees.

Fees for a change of control

3.38 There are specific statutory provisions in the Communications Act 2003 (sections 355-356) which require Ofcom to carry out a review when there is a change of control of the holder of a local analogue commercial radio licence. As discussed in paragraph 3.30 for the TV sector, as this activity leads to additional costs, the cost-reflectiveness criterion suggests it may be appropriate to impose a separate fee on the relevant licensee in respect of this function.

Q10. What are your views on setting a specific fee for change of control of local analogue licences?

Minimum fees

3.39 In the radio sector, the fee for holding national and local analogue licences is set at zero where the fee would otherwise be less than £100. This is in the interest of efficient administration for both Ofcom and licensees. However, as noted above, in the TV sector, there is currently a minimum fee of £1,000 payable by Category A and Category B TV broadcast licensees with turnover which generates a fee of £1000 or less. Although the regulatory activities of both sectors differ, it is worth considering if analogue licences which generate a fee below £100 should be charged a minimum fee as they contribute to the regulatory costs of the sector. We would propose to include the calculation of any such fee within the scope of any review of fixed fees.¹³

*Q11. What are your views on setting a minimum fee for analogue licences which would otherwise be charged a zero fee.*¹⁴

Networks and Services

3.40 We consider the following issues in this sector merit examination:

- removal of the progressive charging bands;
- minimum relevant turnover threshold; and
- treatment of relevant turnover arising from bundled packages.

Removal of the progressive charging bands

3.41 Providers of electronic communications networks and services currently pay Ofcom an annual administrative charge based on their relevant turnover from those activities. Like the TV and radio sectors, the administrative charge payable depends on the band in which the provider's relevant turnover falls. The 2005 SoCP provides that in each charging year, the amount that is payable is a percentage of the provider's relevant turnover, but where the turnover falls within a charging band, the

¹³ See the discussion at paragraphs 3.51 – 3.63 below.

¹⁴ Minimum fees are set as fixed fees, and the general issues section below discusses various approaches to setting fixed fees.

lower figure of the turnover band will be used to calculate the administrative charge. In practice, this means that each year, Ofcom sets a fixed administrative charge per band. Providers which generate relevant turnover in excess of £1billion and so do not fall within a charging band will pay an administrative charge which is calculated as a fixed percentage of their total relevant turnover.

3.42 The table below shows the current charging bands and the charges for 2013/14.

Table 3: 2013/14 Networks and Services Administrative Charges

Charging Bands		
Bottom (£)	Top (£)	Administrative charge £
0	5,000,000	0
5,000,000	10,000,000	4,165
10,000,000	25,000,000	8,330
25,000,000	50,000,000	20,825
50,000,000	75,000,000	41,650
75,000,000	100,000,000	62,475
100,000,000	150,000,000	83,300
150,000,000	200,000,000	124,950
200,000,000	300,000,000	166,600
300,000,000	400,000,000	249,900
400,000,000	500,000,000	333,200
500,000,000	600,000,000	416,500
600,000,000	750,000,000	499,800
750,000,000	1,000,000,000	624,750
Above £1,000,000,000		0.0833%

3.43 For example, a stakeholder with relevant turnover of £18m falls into the £10m - £25m charging band and therefore has an administrative charge of £8,330. A stakeholder with relevant turnover of £1.5bn will pay an administrative charge equal to 0.0833% of £1.5bn, i.e. £1.2million.

3.44 The charging structure was designed to provide gradual progression in the administrative charge, so that those with the highest turnovers pay proportionately more than those with the lowest. However, within individual charging bands, stakeholders pay the same amount, even though there may be a material difference between the turnovers of those at the bottom of the band and of those at the top (for example, a difference of up to £250million in the case of the highest charging band).

3.45 We are therefore proposing to consider whether there is a case, given our assessment criteria, notably fairness, equity and harmonisation, for removing the current charging bands and applying a single fixed charging rate to relevant turnover to calculate the administrative charge.

Q12. What are your views on the removal of the current charging bands so that the administrative charge is calculated as a single fixed percentage of relevant turnover? Please provide reasons for your views.

Minimum relevant turnover threshold

- 3.46 In setting minimum relevant turnover thresholds, those regulated operators whose relevant turnover figures are below the relevant minimum are not required to contribute to the regulatory costs of their sector. By applying such thresholds, the risk of a regulatory cost contribution acting as a barrier to entry, and thus the charging structure potentially changing the operation of the market, is reduced. Additionally, it can also reduce administration costs for Ofcom in setting fees. However, there is a trade off to be struck between these benefits and ensuring that those above the threshold do not, through the exclusion of smaller operators, have to contribute disproportionately to the regulatory costs for the sector
- 3.47 The current minimum threshold level of £5million was last reviewed in 2005. We consider it appropriate to review whether the current level of this threshold remains appropriate, given changes in the market over the years.

Q13. Is the minimum relevant turnover threshold for the networks and services sector set at the appropriate level? If you think it should be revised, please say what alternative threshold you consider might be appropriate and your reasons for that view.

Treatment of relevant turnover arising from bundled packages

- 3.48 Since the publication of the 2005 SoCP and Ofcom's guidelines on relevant activity for the purpose of administrative charging,¹⁵ the combining of TV content, broadband and telephony services to create "triple play" bundles has become increasingly prevalent. A number of stakeholders who operate in both the TV and networks and services regulatory sectors now structure some of their service packages on this basis. Whilst the existing sector-specific guidance still applies to turnover generated from such bundles, there is currently no specific guidance for stakeholders addressing how turnover arising from bundled services should be allocated to each relevant regulatory category, identified in the 2005 SoCP.¹⁶
- 3.49 We are proposing to explore whether this gives rise to a gap in the framework for determining regulatory fees and charges, which we should address through the provision of further guidance on the disaggregation of turnover arising from bundled packages. At this stage, we are inviting stakeholders who market bundled services to tell us how they allocate their turnover from these bundles between each of the relevant activities (e.g. TV broadcasting and networks and services) so that we can consider the extent to which stakeholders adopt a common approach or are guided by common principles in carrying out such an allocation.

Q14. Do you generate turnover from the sale of bundled services which fall within more than one of the regulatory categories identified in the 2005 SoCP? If so, please provide details of your allocation method between each of the regulatory categories for the purposes of your returns of relevant turnover to Ofcom and the extent to which the guidance that Ofcom has provided on the definition of relevant activity in relation to the provision of networks and services and on the definition of relevant turnover in the broadcasting sectors¹⁷ has informed the approach you have taken.

¹⁵ <http://stakeholders.ofcom.org.uk/binaries/consultations/designation/statement/statement.pdf>

¹⁶ See paragraph 3.5, 2005 SoCP.

¹⁷ 2005 SoCP, Annexes B and C

General Issues

3.50 In the preceding sub-sections setting out the issues we have identified for consideration in each of the regulatory sectors, we primarily discussed the approach we currently take for the determination of variable charges and licence fees. In addition to these, we also charge stakeholders a range of different fixed fees for certain regulatory activities that we carry out (for example, licence variations and transfers in the TV sector). We therefore think the fixed fees we set are worthy of a review¹⁸ and in this sub-section, we consider the different approaches that we could take for determining the level at which they should be set.

Cost reflective fixed fees

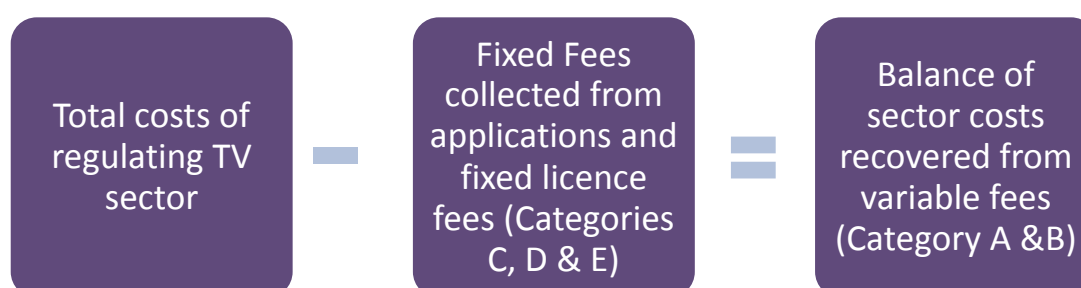
3.51 For practical reasons, we charge fixed fees for discrete regulatory activities within the control of individual stakeholders (for example, a broadcasting licence application) or where relevant turnover is not an appropriate basis for charging (for example, community radio). The table below shows which fees are fixed in each sector.

Table 4: Fixed fees by sector

Networks and Services	TV	Radio	Post
Electronic communications code annual administrative charge and application fee	Categories C, D & E annual licence fees, application, variation and transfer fees	Annual licence fees (excluding national and local licences), applications, renewals and amendment fees	N/A

3.52 Most fixed fees have not changed since 2005. As a result, in real terms, the proportion of Ofcom's regulatory costs that are offset by fixed fees has reduced, with the balance recovered from variable fees charged to the relevant sectors.

3.53 The diagram below illustrates this interplay between fixed and variable fees (using the TV sector as an example) in achieving sector recovery.



3.54 By making fixed fees more cost reflective (with reference to Ofcom's regulatory costs), we would recover the costs we expect to incur in regulating the category

¹⁸ Other than fixed fees which apply to local TV licensees or to Restricted Television Service licensees

across stakeholders within the category. For example, if a regulatory category was identified as costing £1m per annum and there were 100 licences within that category, then the resulting fixed fee per licence would be £10,000 per annum.

- 3.55 In adopting this approach we would be consistent with the cost-reflectiveness criterion.
- 3.56 By drawing on a quantifiable evidence base, in some instances cost-reflection may lead to more robust fixed fees. However, in other instances fees may not be easily calculable (for example, where there are no repeatable events)¹⁹ and so there would be little such benefit. Further, as we discuss below, in some instances we may be more concerned about stakeholders' ability to afford fees or preventing barriers to market entry, and so cost reflection may not necessarily meet this aim.

Affordable fixed fees

- 3.57 Instead of setting fixed fees with reference to the regulatory costs incurred by the category in question, in some instances it may be appropriate to calculate fees on the basis of affordability. For example, fees could be fixed with reference to a stakeholder's size (for example, population size) or financial efficiency (for example, relevant turnover).
- 3.58 The benefits of doing so may be particularly advantageous where there are categories of service for which there is a material risk of setting fees which create barriers to entry. Nonetheless, there may be other factors we would need to consider when making an assessment of whether to use the basis.
- 3.59 This is because affordability is a measure of stakeholder performance and market operation and, unless the regulatory category has a small number of consistently sized and performing stakeholders; it may be unlikely that a universally affordable fee could be set.

Notional fixed fees

- 3.60 Another alternative may be to set fees on a notional basis. In these instances we would not set fees with reference to either cost or affordability, but based on the principle that contribution to the cost of regulation is an important feature of a regulated sector. It is worth noting that notional fees have no clear relationship with any particular driver (for example, cost or affordability) and are unrelated to a quantifiable evidence base, which may reduce the perceived robustness of the fee.

Review of fixed fees

- 3.61 A drawback of not reviewing fees regularly is that they can cease to be cost reflective or affordable over time. This can contribute to increases in variable fees as the balance of the total sector costs is recovered on this basis (paragraph 3.53) and lead to unexpectedly high bills for those charged variable fees.
- 3.62 On the other hand, reviewing more regularly could introduce a significant administrative burden on stakeholders and Ofcom in order to set fees (the degree would clearly vary according to how often we review).

¹⁹ An example of such an event includes applications for 'one-off' licences where even if there is more than one licence in the type (such as a national analogue radio licence or a TV MUX) they are so infrequent and individual that there is potentially little similarity or repeatable work.

- 3.63 One option could be to link certain types of fixed fees to an inflation index, for instance. For example, fees could be set with reference to an index such as the Consumer Price Index (CPI). The advantage of this would be that it would reduce the need to continually review fees as the contribution which the stakeholder makes would be maintained in real terms at a level consistent with the initial fee set. We currently do not index fixed fees, and so this would be a new approach requiring thought on what index approach would be appropriate and why.

Q15. If we were to review the current levels of fixed fees that we set, what do you consider would be an appropriate basis of calculation? Please provide reasons for your views.

Annex 1

Responding to this consultation

How to respond

- A1.1 Ofcom invites written views and comments on the issues raised in this document, to be made **by 5pm on 19 June 2014**.
- A1.2 Ofcom strongly prefers to receive responses using the online web form at <http://stakeholders.ofcom.org.uk/consultations/statementofchargingprinciples/howtorespond/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.
- A1.3 For larger consultation responses - particularly those with supporting charts, tables or other data - please email socpconsult@ofcom.org.uk attaching your response in Microsoft Word format, together with a consultation response coversheet.
- A1.4 Responses may alternatively be posted or faxed to the address below, marked with the title of the consultation.
- Olu Bankole
Riverside House
2A Southwark Bridge Road
London SE1 9HA
- Fax: 020 7783 4901
- A1.5 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.
- A1.6 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

- A1.7 If you want to discuss the issues and questions raised in this consultation, or need advice on the appropriate form of response, please contact Olu Bankole on 020 7981 3619.

Confidentiality

- A1.8 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, 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.

- A1.9 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.
- A1.10 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/terms-of-use/>

Next steps

- A1.11 Following the end of the consultation period, Ofcom intends to progress to the second stage of the consultation.
- A1.12 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

Ofcom's consultation processes

- A1.13 Ofcom seeks to ensure that responding to a consultation is easy as possible. For more information please see our consultation principles in Annex 2.
- A1.14 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. 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.
- A1.15 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

Email Graham.Howell@ofcom.org.uk

Annex 2

Ofcom's consultation principles

A2.1 Ofcom has published the following seven principles that it will follow for each public written consultation:

Before the consultation

A2.2 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

A2.3 We will be clear about who we are consulting, why, on what questions and for how long.

A2.4 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 Plain English Guide for smaller organisations or individuals who would otherwise not be able to spare the time to share their views.

A2.5 We will consult for up to 10 weeks depending on the potential impact of our proposals.

A2.6 A person within Ofcom will be in charge of making sure we follow our own guidelines and reach out to the largest number of people and organisations interested in the outcome of our decisions. Ofcom's 'Consultation Champion' will also be the main person to contact with views on the way we run our consultations.

A2.7 If we are not able to follow one of these principles, we will explain why.

After the consultation

A2.8 We think it is important for everyone interested in an issue to see the views of others during a consultation. We would usually publish all the responses we have received on our website. In our statement, we will give reasons for our decisions and will give an account of how the views of those concerned helped shape those decisions.

Annex 3

Consultation response cover sheet

- A3.1 In the interests of transparency and good regulatory practice, we will publish all consultation responses in full on our website, www.ofcom.org.uk
- A3.2 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.
- A3.3 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.
- A3.4 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 <http://stakeholders.ofcom.org.uk/consultations/consultation-response-coversheet/>
- A3.5 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 4

Consultation questions

We have set out the questions (by sector) on which we seek stakeholders' feedback for ease of reference below:

Post:

Q1. What are your views of the basis on which turnover from letter services is currently calculated for the purposes of administrative charges? In particular, would it be appropriate to include turnover from access services within the calculation? Please provide reasons for your views.

Q2. Is tracking now a standard feature of letter services so that it should be removed from the current definition of premium services? Please provide reasons for your views.

Q3. Do you think that turnover from access services, if taken into account for the purposes for administrative charging, should be calculated on the basis of gross revenue or on the basis of net revenue (after the deduction of access charges to Royal Mail)? Please provide reasons for your view.

Q4. Is the minimum turnover threshold of £10 million from the provision of letter services still appropriate? If you consider it should be raised or lowered, please specify the threshold you consider would be more appropriate and why.

TV:

Q5. What are your views on adopting a linear charging rate rather than progressive charging rates and why?

Q6. What are your views on the relevant turnover ceiling? Is there a case for its removal or do you think the level at which it is set should be changed? Please provide reasons for your views.

Q7. What are your views on harmonising our approach to recovering our regulatory costs of licence variations and transfers in the TV and radio sectors? Do you have a preference for recovering these costs through separate fees or via the annual broadcasting licence fees that we charge? Please provide reasons for your views.

Radio:

Q8. What are your views on setting a specific fee for change of control of a Channel 3 or Channel 5 licence?

Q9. What are your views on adopting a linear charging rate rather than a progressive charging rate for the calculation of radio licence fees? If your preference is for a progressive charging rate, please indicate whether this should be structured in a similar way to the current progressive charges for TV broadcast licensees.

Q10. What are your views on setting a specific fee for change of control of local analogue licences?

Q11. What are your views on setting a minimum fee for analogue licences which would otherwise be charged a zero fee?

Networks and services:

Q12. What are your views on the removal of the current charging bands so that the administrative charge is calculated as a single fixed percentage of relevant turnover? Please provide reasons for your views

Q13. Is the minimum relevant turnover threshold for the networks and services sector set at the appropriate level? If you think it should be revised, please say what alternative threshold you consider might be appropriate and your reasons for that view.

Q14. Do you generate turnover from the sales of bundled services which fall within more than one of the regulatory categories identified in the 2005 SoCP? If so, please provide details of your allocation method between each of the regulatory categories for the purposes of your returns of relevant turnover to Ofcom and the extent to which the guidance that Ofcom has provided on the definition of relevant activity in relation to the provision of networks and services and on the definition of relevant turnover in the broadcasting sectors has informed the approach you have taken.

General:

Q15. If we were to review the current levels of fixed fees that we set, what do you consider would be an appropriate basis of calculation? Please provide reasons for your views.