



**OFCOM CONSULTATION: TELEVISION MULTIPLEX LICENCE RENEWALS,  
MULTIPLEX C & MULTIPLEX D  
RESPONSE OF BRITISH SKY BROADCASTING GROUP PLC**

1. This submission constitutes the response of British Sky Broadcasting Group plc (**Sky**) to Ofcom's consultation on television multiplex licence renewals, Multiplex C (**Mux C**) & Multiplex D (**Mux D**), dated 7 July 2011 (the **Consultation**).
2. In general Sky supports Ofcom's proposal to renew Arqiva's Mux C and Mux D Broadcasting Act 1996 (**BA**) and Wireless Telegraphy Act (**WTA**) licences for a further 12 year term commencing upon the expiry of the existing term. Sky does, however, see this as an opportunity for Ofcom to address certain long-standing inefficiencies in the current digital terrestrial television (**DTT**) licensing regime.
3. The Consultation concerns the renewal of Arqiva's licences for Mux C and Mux D. Where relevant, Sky's submissions could also be applicable to any future renewals of other multiplex licences but which in any case, in Sky's view, merit Ofcom's consideration.

***All licence obligations relating to DSO should be removed***

4. Digital Switchover (**DSO**) will reach a natural conclusion at the end of 2012 when the last analogue signal is shut down. By this time, the purposes for which obligations relating to DSO were included in not only the multiplex operators' licences but also DTT broadcasters' DTPS and DTAS licences will have been achieved.
5. But for Condition 11(9) (discussed below) Sky agrees with Ofcom's proposal to delete the provisions listed at paragraph 3.14 of the Consultation from any renewed multiplex licences. But suggests that other provisions related to DSO are removed from not only the multiplex licences but also DTT broadcasters' DTPS and DTAS licences.
6. Annex A, Part 8 of the multiplex licences contains an obligation to:

*"use all reasonable endeavours to cooperate in all respects, including promptly and in good faith, with:*

- (a) other Ofcom licensees;*
- (b) Government;*
- (c) Digital UK; and*
- (d) with such other parties, as necessary, or as notified to him by Ofcom,*  
*in the administration, organisation or implementation of Digital Switchover in the United Kingdom".*

This same obligation applies to DTT broadcasters and is included at Annex B to the standard DTPS and DTAS licences.

7. By the end of 2012, the administration, organisation and implementation of DSO will be complete and the purpose of this obligation will, therefore, have been achieved. For this reason, Sky considers that Annex A, Part 8 should be removed from the multiplex licences and that Annex B should be removed from Ofcom's standard DTPS and DTAS licences.



***Ofcom is not justified in removing Condition 11(9) from the Mux C and Mux D licences***

8. Ofcom proposes to delete Condition 11(9) from the Mux C and Mux D licenses. Ofcom's rationale is that this provision (together with those set out in paragraph 3.14 of the Consultation), in so far as it relates to the establishment and functioning of ServicesCo, is redundant following the conclusion of DSO in the UK.
9. Sky believes, however, that the purpose behind Condition 11(9) is broader than DSO alone. Condition 11(9) was not introduced as a result of Ofcom's 2006 consultation on switchover related changes to DTT licences. Condition 11(9) provides the basis for membership of Freeview (in terms of the corporate entity). It is not clear, therefore, why Ofcom now proposes to remove this condition from the multiplex licences. Indeed, removing Condition 11(9) risks creating uncertainty around eligibility for Freeview membership.
10. The basis Ofcom has given for removing Condition 11(9) from the multiplex licences (i.e. the end of DSO) is not sustainable. Without adequate justification, Ofcom should not remove this condition.

**[CONFIDENTIAL]**

***Ofcom should remedy long-standing inefficiencies in the DTT licensing regime***

11. Although technically outside the scope of the consultation at hand, Sky has identified certain inefficiencies that currently exist in the DTT licensing regime. The renewal of the multiplex licenses would be an opportunity to remedy these issues.

Changes to channel line-up

12. The current mechanism for varying DTT licensed services is cumbersome and outdated. Condition 17(2) of the multiplex operators' licences provides that:

*"If the Licensee applies to the Commission for the variation of Conditions in the Annexes which relate to the characteristics of the digital programme services to be broadcast in the Licensed Service, the Commission shall permit the variation requested unless it appears to the Commission that, if the application is granted, the capacity of the digital programme services broadcast in the Licensed Service to appeal to a variety of tastes and interests would be unacceptably diminished."*

13. The Ofcom standard DTPS licence provides no equivalent provision. The DTPS licensee (i.e. broadcaster) is simply required to notify Ofcom of any variation to the characteristics of the digital television programme service. Sky notes that there is also no equivalent provision in the standard Ofcom TLCS licence.
14. These provisions result in an over-complicated licensing process: a broadcaster wishing to vary its DTT channel line-up must procure the relevant multiplex operator to submit an application to Ofcom. Since the multiplex operator is in no position to provide evidence as to how such a variation would impact the *"capacity of the digital programme services broadcast in the Licensed Service to appeal to a variety of tastes and interests would be unacceptably diminished"*, the broadcaster must engage with Ofcom on its behalf without



being party to the variation application. As such, the broadcaster is not in control of the licensing process.

15. Furthermore, Ofcom is obliged to consider the proposed variation only in the context of the “*Licensed Service*” (i.e. the service described in Annex A to the multiplex licence and which is tied to a 2002 definition of the multiplex operator’s Core Proposals) and not the DTT platform as a whole. Such an exercise appears wholly artificial given that DTT viewers cannot distinguish between services provided on one multiplex over another.
16. In 2002, DTT capacity was a much scarcer commodity and there may have arguably been greater justification for Ofcom exercising some control over the range of services available to DTT viewers. But developments in compression and modulation technology have resulted in more effective capacity being made available on the DTT platform such that many more services are now available. In 2002, there were circa 20 channels available on DTT; there are now over 50 with the potential, given developments in technology, to expand the number of channels significantly in the future.
17. Sky sees this process as anachronistic and unnecessary; Ofcom should act pursuant to its duty under Section 6(1) of the Communications Act 2003 to remedy it. The renewal of the multiplex licences is an opportunity to bring the DTT licenses in line with those for other platforms whereby the broadcast licensing process is a matter for the broadcaster and Ofcom. Indeed, Sky sees no need to perpetuate the current distinction between DTPS and TLCS licences.

#### DMOL

18. Sky believes that the technical platform management of DTT would benefit from greater regulatory certainty. DMOL (a company owned by the multiplex operators) has become the de facto platform manager for the DTT platform with control over the DTT EPG and channel numbering. DMOL describes itself as a “*business to business organisation*”, but it actually performs a quasi-public function. Even though multiplex operators themselves are subject to the provisions of their multiplex licences, the basis of regulation of DMOL remains unclear. There is no clarity for example of the extent of regulatory oversight by Ofcom of DMOL in relation to the provision of EPG services. The present consultation provides Ofcom with an opportunity to address this situation.

#### Three channel limit

19. Sky believes that the current restriction on Sky broadcasting a maximum of three services on Mux C and any service on Mux D is anachronistic and unnecessary. To the extent that such rules may have been justified at a time when DTT capacity was scarcer, today developments in compression and modulation technology have resulted in more effective capacity being made available on the DTT platform such that the platform hosts a wide range of services and faces less capacity constraints. As a result, this restriction is unnecessary and discriminates against Sky and Arqiva. Sky believes that, for these reasons, Ofcom should act on its duty under Section 6(1) of the Communications Act 2003 and remove Condition 11(11) from the licences for Mux C and Mux D.



20. Sky also notes that the wording in Annex A: Part 3(5) of the Mux C licence is out of date. For the reasons given above, Sky believes that there is no need for this provision and suggests that it be removed from the Mux C licence.

**Sky**

**6 September 2011**