



Television Multiplex Licence Renewals

Multiplex C and Multiplex D

Statement

Publication date: 27 January 2012

Contents

Section		Page
1	Summary	1
2	Background to the consultation	3
3	Consultation responses	6
4	Next steps in the licensing process	10
Annex		Page
1	Clauses to be removed from the Multiplex C and Multiplex D Licences	12

Section 1

Summary

- 1.1 In 2002, Ofcom awarded licences under the Broadcasting Act 1996 (the “1996 Act” and the “BA Licences”) for the operation of digital television multiplexes known as Multiplexes C and D to Arqiva Services Limited (“Arqiva”). The BA Licences are due to expire in November 2014. Under the provisions of the 1996 Act the licensee may apply to renew its licences for a further period of 12 years.
- 1.2 In November 2010, Ofcom received an application from Arqiva to renew the two BA Licences. Arqiva reconfirmed its application in March 2011. 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 the acquisition of digital terrestrial television (“DTT”) receiving equipment. Following consultation¹ we have decided not to require any such additional obligations.
- 1.3 We have also decided not to require Arqiva to pay a percentage of multiplex revenue (PMR) in respect of either of its two television multiplex licences upon renewal. This is in light of our stated intention to introduce Administered Incentive Pricing (AIP) as a means of charging for the spectrum used for broadcasting.
- 1.4 Under the Act, the consent of the Secretary of State for Culture, Olympics, Media and Sport (the “Secretary of State”) is required before any renewal or refusal to renew may take effect. The Secretary of State has confirmed that he consents to our approach. He has also confirmed that he will not use his discretionary powers to direct us to set a rate for PMR.
- 1.5 In addition to considering whether to renew the BA Licences under section 16 of the 1996 Act, in June 2011 Arqiva requested that Ofcom should also consider the removal of certain existing licence requirements related to the promotion of reception equipment which Arqiva considered have been successfully achieved. We have decided that, subject to the formal consent of the licence holder in accordance with section 12(2) of the 1996 Act, the renewed BA Licences should be varied to remove these provisions, and for reasons set out in this Statement one further provision. The provisions are as follows:
 - The definitions of “DTT Marketing Plan” and “ServicesCo” contained in Condition 1;
 - The words “through or involving ServicesCo” in Condition 11(8);
 - Condition 11(9);
 - Annex A, Part 6;
 - Annex B, Part 1.

¹ Television Multiplex Licence Renewals – Multiplex C & D, Consultation, July 2011, http://stakeholders.ofcom.org.uk/binaries/consultations/television-multiplex-renewals/summary/Mux_condoc.pdf

Next Steps

- 1.6 We will write to Arqiva, the holder of the licences for each of Multiplex C and Multiplex D, to notify them of our decision, in accordance with section 16 of the 1996 Act, to renew their licences for a period of 12 years without requiring additional obligations relating to: (a) the coverage of the service; and/or (b) promoting the acquisition of DTT receiving equipment. We will also not require Arqiva to pay a PMR in respect of the BA Licences.
- 1.7 Separately, once the renewal process has been completed, we will write to Arqiva to formally seek their consent, in accordance with section 12(2) of the 1996 Act, to vary the renewed BA Licences so as to remove the provisions set out at paragraph 1.5 above from the renewed BA Licences.

Section 2

Background to the consultation

Statutory requirements and background

- 2.1 Section 16 of the 1996 Act provides that if a television multiplex licence is granted within six years of commencement of that section, it may be renewed, on one occasion, for a period of twelve years beginning on the date on which it would otherwise expire. Each licence holder may submit an application for renewal during a specified timeframe, beginning four years prior to the original expiration date of its licence.
- 2.2 Three of the five² existing DTT multiplex licences, those for Multiplex B, Multiplex C and Multiplex D, will expire in 2014. It is therefore currently open to the holders of these licences to submit renewal applications, as the period for renewal has already begun. The closing date for applications, set under the Act as three months prior to the “relevant date” is 16 February 2013.³
- 2.3 In November 2010, Ofcom received an application from Arqiva to renew the two BA Licences it holds (i.e. Multiplexes C and D). Arqiva reconfirmed its application in March 2011.
- 2.4 This statement sets out Ofcom’s decision on how it will deal with Arqiva’s application to renew its BA Licences. To date, the holder of Multiplex B has not indicated its intention to apply for renewal of its licence and a separate consultation on issues relating to the renewal of that licence will take place should Ofcom receive an application for renewal.
- 2.5 Under the 1996 Act, when considering whether or not to renew a television multiplex licence, Ofcom has to reach decisions on certain issues:
 - we may require a supplementary 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 require supplementary proposals for the promotion of, or assistance with, the acquisition of equipment capable of receiving digital services in the area.
 - we may require the licensee to make additional payments, in the form of a percentage of multiplex revenue (PMR).
- 2.6 Before confirming any of these decisions, Ofcom requires the consent of the Secretary of State. With regard to any decision on PMR, in addition to his 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.
- 2.7 In addition to considering whether to renew the BA Licences under section 16 of the 1996 Act, in June 2011 Arqiva requested that in its consultation Ofcom also consider the removal of certain existing licence requirements relating to the promotion of reception equipment on that basis that they will have been successfully achieved.

² The other two existing licences (Multiplex A and 2) were renewed on existing terms in 2010.

³ The consultation document incorrectly referred to this date as May 2012.

Ofcom was not required to consider the removal of these provisions for the renewal process under section 16 of the 1996 Act. However, as the provisions in question relate to subject matter that we are required to consider for the purposes of section 16(4)(ii) (i.e. whether supplementary proposals for the promotion of, or assistance with, the acquisition of equipment capable of receiving digital services in the area should be required), Ofcom considered it appropriate to deal with the proposed removal of these provisions as part of its consultation on the renewal of the BA Licences.

Consultation Proposals

- 2.8 We set out our proposals on these issues in the consultation *Television Multiplex Licence Renewals – Multiplex C & D*, published in July 2011.⁴
- 2.9 In relation to coverage, we proposed that Arqiva should not be required to submit a new technical plan in respect of either licence. This is based on our stated policy that, provided coverage did not fall below the level of coverage at that time (73% of homes), then commercial multiplexes should be able to “determine their own coverage objectives...”⁵. Post digital switchover (“DSO”) it is predicted that coverage will provide digital services to 90% of UK households. On that basis, we did not consider it necessary to require any supplementary proposals for the term of the renewed licences.
- 2.10 We also proposed that Arqiva should not be required to submit any new proposals for promoting the acquisition of DTT receiver equipment. We based this on the view that as we approach the end of the DSO process, the take-up of digital television (93% of households as of Q4 of 2010) is evidence of widespread consumer knowledge of how digital television operates and the equipment needed to receive digital television.
- 2.11 We noted that, the current licences (with their existing conditions relation to the promotion of the platform) do not expire until the end of 2014 (beyond the expected completion date for DSO) by which time there appears to be little need for such commitments.
- 2.12 In relation to PMR we set out our preferred approach⁶. This was to set a zero PMR rate for the entire duration of the renewed licence, leaving AIP as the sole option for a future pricing mechanism starting from 2014.
- 2.13 With regard to Arqiva’s June 2011 request for Ofcom to consider the removal of the obligations relating to the promotion of, or assistance with, the acquisition of digital receiver equipment and the establishing and functioning of Freeview⁷ Ofcom agreed with Arqiva and proposed the removal of the provisions. Our rationale for their removal acknowledged 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 effectively. In recognising that the DTT platform is now sufficiently mature, we explained that we were satisfied that the need to ensure the promotion of the platform through regulatory intervention in the form of licence obligations had now diminished.

⁴ Consultation Document: http://stakeholders.ofcom.org.uk/binaries/consultations/television-multiplex-renewals/summary/Mux_condoc.pdf

⁵ Statement: http://stakeholders.ofcom.org.uk/binaries/consultations/dtt_changes/statement/statement.pdf

⁶ http://stakeholders.ofcom.org.uk/binaries/consultations/television-multiplex-renewals/summary/Mux_condoc.pdf

pg. 8

⁷ Freeview – the marketing body for the DTT Platform

- 2.14 We also considered that outside of the relationship imposed by the regulatory framework, there already existed 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-switchover era, we explained that we were satisfied that the purpose of this intervention will have been fulfilled by the time of renewal. As such, there was little need for such conditions to be included in the renewed licences.
- 2.15 Having reached this conclusion and as Ofcom is under a statutory duty not to impose, or maintain regulatory burdens which are unnecessary (Section 6 of the Communications Act 2003) we therefore proposed that it is appropriate that these provisions be removed from any renewed licences.
- 2.16 We asked stakeholders for their views on our proposals. Specifically, we invited responses to four questions. The questions, a summary of responses and Ofcom's decisions are set out in Section 3.

Section 3

Consultation responses

Consultation questions and responses

3.1 We received responses from Arqiva, BBC, Mr Dominic Carey, Digital 3&4 Limited, ITV plc and Sky. Sky's response was partially confidential. Copies of the non-confidential responses (including a non-confidential version of Sky's response) can be found on the Ofcom website.⁸

3.2 The majority of respondents generally gave their support to our proposed approach to multiplex licence renewal. Responses to the specific questions asked are set out below.

Question 1: Do you agree that Ofcom should not seek a supplementary technical plan in respect of Multiplexes C and D prior to considering whether or not to renew the BA Licences?

3.3 The majority of respondents agreed with this approach.

3.4 In particular, the BBC considered that multiplex operators had already shown full commitment to promoting digital television and queried whether any further coverage requirements reasonably could be placed on multiplex operators.

3.5 One respondent disagreed with our approach and was concerned that not seeking a supplementary technical plan could mean that the multiplex operators would have no guidelines by which to operate in the event of a problem. Ofcom notes that the purpose of the technical plan is not to provide guidelines to follow in the event of a problem or issue. Rather, as set out at paragraph 3.2 of the consultation, the technical plan sets 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. For the avoidance of doubt, the original technical plan remains part of the BA Licences and Ofcom's proposal was not to require a supplementary technical plan.

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

3.6 The majority of respondents agreed with our assessment and proposal. One respondent noted our comment on the level of awareness of digital receiver equipment which would increase after DSO has completed, thus removing the need for such provisions in the renewed licences.

3.7 One respondent disagreed with our approach as he felt that our proposal would give an unfair advantage to Sky and Virgin Media to promote their services and equipment. We do not agree. As set out at paragraph 3.6 of the consultation document, Ofcom considers that DTT, and the Freeview organisation specifically, are now sufficiently established that there is no longer a need for regulatory intervention to ensure that they are promoted and marketed.

⁸ Television Multiplex Licence Renewal Consultation responses:

<http://stakeholders.ofcom.org.uk/consultations/television-multiplex-renewals/?showResponses=true>

Question 3: Do you agree that Ofcom should remove the provisions set out at paragraph 3.14 [of the consultation document] from any renewed BA Licences?

- 3.8 Four respondents agreed with our proposed approach. They also agreed that the removal of such terms should apply to any renewed BA licence i.e. be removed from the Multiplex A and Multiplex 2 licences (held by SDN Ltd and Digital 3&4 Ltd respectively) which have already been renewed, and the Multiplex B licence (held by BBC Free to View Ltd) which has yet to be renewed.
- 3.9 One respondent disagreed with our approach and felt that the removal of the licence conditions would allow multiplex operators to proceed without adequate guidelines and give an unfair advantage to Sky and Virgin Media to promote their services and equipment. For the reasons set out in paragraph 3.7, we do not agree.

Condition 11(9)

- 3.10 Sky agreed with our proposal except in relation to Condition 11(9) of the BA Licences, which states:

Condition 11 Fair and effective competition

- (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.

- 3.11 Sky expressed the view that the purpose behind Condition 11(9) is broader than DSO alone and that the condition was not introduced as a result of Ofcom's 2006 consultation on DSO-related changes. Rather it provides a basis for membership of Freeview (formerly ServicesCo) in terms of the corporate entity. Sky contends that our grounds for removing Condition 11(9) are inadequate and that removing the condition will "create uncertainty around eligibility for Freeview membership."
- 3.12 Our rationale for the removal of this licence condition (and other related ones) was not directly related to the DSO process. Rather, our rationale for their removal acknowledged 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 effectively. In this regard, it is important to note the context in which this occurred, in that the award of the licences for Multiplex C and Multiplex 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 explained in our consultation that we were satisfied that the purpose of this intervention will have been fulfilled by the time of renewal. As such, there was little need for such conditions, including Condition 11(9) to be included in the renewed licences.

- 3.13 Although Sky expressed a concern that the removal of Condition 11(9) “risks creating uncertainty around eligibility for Freeview membership”, it did not explain why this might be the case. Ofcom notes that eligibility for membership of Freeview will continue to be determined by the constitutional arrangements of Freeview. As the need for regulatory intervention in the functioning of Freeview has now diminished, Ofcom considers it appropriate to remove the obligations connected with the establishment and functioning of Freeview, so as to allow it to operate on a purely commercial basis.
- 3.14 Therefore, and taking account of Ofcom’s statutory duty not to impose, or maintain regulatory burdens which are unnecessary⁹, we are satisfied that it is appropriate that these provisions be removed from any renewed multiplex licence.

Removal of other provisions

- 3.15 In its response, Arqiva further suggested the removal of the definition of ‘DTT Marketing Plan’ from Condition 1. On the basis that the DTT Marketing Plan is defined as the document referred to in Part 6 of Annex A, and Ofcom is removing Part 6 of Annex A, Ofcom agrees that it is appropriate to remove this definition.
- 3.16 Sky also suggested the removal of an obligation in relation to DSO contained at Annex A, Part 8 from the multiplex licences and also DTT broadcasters’ DTSP and DTAS licences. The obligation is as follows:

The Licensee shall use all reasonable endeavours to cooperate in all respects, including promptly and in good faith, with:

- (a) other Ofcom licensees, the BBC and S4C;
- (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 and the DTT Clearance Programme in the United Kingdom.

- 3.17 Ofcom notes Sky’s suggestion for the removal of the obligation in relation to Digital Switchover (but not in relation to the DTT Clearance Programme) from any renewed BA Licences. However, as set out above, Ofcom’s rationale for the removal of the provisions set out at paragraph 3.14 of the consultation document is that they relate to the same subject matter we are required to consider as part of the renewals process under section 16 of the Act (i.e. promotion of reception equipment). In contrast, this provision relates specifically to DSO. Ofcom recognises that licence amendments to remove DSO specific obligations will impact on many licensees and across several licence types. Therefore, once DSO has been completed Ofcom envisages, where appropriate, considering the possibility of undertaking a separate piece of work to remove all provisions that facilitated the implementation of DSO. Ofcom will therefore consider removing this obligation at that time.

⁹ Communications Act 2003, section 6.

Question 4: Do you agree with our preference not to apply a charge for PMR in a renewed BA Licence, in light of our stated intention to charge AIP for spectrum used for broadcasting?

- 3.18 Respondents agreed with our preference not to require Arqiva to pay a PMR in respect of either of its multiplex licences in light of our stated intention to charge AIP for spectrum used for broadcasting.
- 3.19 Two respondents agreed that it was appropriate to adopt the same approach to PMR as had been adopted for the Multiplex A and Multiplex 2 licences when they were renewed – i.e. no charge for PMR.
- 3.20 While agreeing with our approach, a number of respondents expressed concerns about the introduction of AIP in general. It is outside the scope of this statement to deal with such concerns. However, Ofcom has already stated its intention to consult more widely on the introduction of any such fees and we will of course engage with all relevant parties at that time.

General Comments

- 3.21 In its response to the consultation, Sky raised a number of issues that fall outside of the scope of the multiplex licence renewal process; on that basis it is not appropriate for us to consider them here.
- 3.22 We are however aware that some of the issues raised are of a wider interest to stakeholders. Where we have not already commenced formal engagement to address these matters, it is our intention to consider the scope of the work involved and how we intend to proceed. We will then contact Sky and other stakeholders as appropriate.

Conclusion

- 3.23 Having carefully considered all of the responses to the consultation, we have concluded it is appropriate to proceed with the renewal of the licences for Multiplexes C and D on the basis set out in the consultation document. Specifically, this means that the holder of these two licences, Arqiva, will not be required to submit supplementary technical plans with revised coverage proposals or supplementary proposals for the promotion of, or assistance with, the acquisition of DTT receiver equipment. Nor will it be required to pay a PMR for the duration of the renewed licences. The Secretary of State has consented to Ofcom's approach.
- 3.24 In addition, subject to the formal consent of the licence holder, the renewed BA Licences will be varied so as to remove the following provisions:
- The definitions of "DTT Marketing Plan" and "ServicesCo" contained in Condition 1;
 - The words "through or involving ServicesCo" in Condition 11(8)
 - Condition 11(9);
 - Annex A, Part 6;
 - Annex B, Part 1.

Section 4

Next steps in the licensing process

Ofcom's decisions

- 4.1 The consultation responses show that those stakeholders who made representations generally agreed with our approach to these issues.
- 4.2 We have now received confirmation from the Secretary of State that he consents to our proposals. In addition, the Secretary of State has confirmed that he will not direct us to set a particular rate of PMR.
- 4.3 Therefore, we have decided to renew the BA Licences in accordance with section 16 of the Act, and in particular we have decided:
 - 4.3.1 We will not require the Licensee to provide a supplementary technical plan in respect of Multiplexes C and D.
 - 4.3.2 We will not require any supplementary proposals in relation to the promotion of, or assistance with the acquisition of digital television receiver equipment.
 - 4.3.3 In light of our stated intention to charge AIP from 2014, we will set a zero rate for PMR for the duration of the licences.
- 4.4 Separately, Ofcom has also decided to formally seek Arqiva's consent, in accordance with section 12(2) of the 1996 Act, to vary the renewed BA Licences so as to remove the following provisions:
 - The definitions of "DTT Marketing Plan" and "ServicesCo" contained in Condition 1;
 - The words "through or involving ServicesCo" in Condition 11(8);
 - Condition 11(9);
 - Annex A, Part 6;
 - Annex B, Part 1.
- 4.5 Should Multiplex B licence be renewed, Ofcom envisages following the same procedure to vary it so as to remove the above provisions.

Next Steps

- 4.6 We will write to Arqiva, holders of the Multiplex C and Multiplex D licences, to notify them of Ofcom's decision to renew the BA Licences for a period of 12 years effective from 17 November 2014.

- 4.7 It is our practice to charge a fee for licence renewals. Ofcom's *Tariff Tables 2011/2012* contains details of the fees payable. In the case of Television Multiplex renewals we set the fee at £25,000.¹⁰
- 4.8 Once the renewals process has been completed, we will write to Arqiva to formally seek their consent to vary the renewed BA Licences so as to remove the provisions set out at paragraph 4.4 above from the renewed BA Licences.

¹⁰ http://stakeholders.ofcom.org.uk/binaries/research/Tariff_Tables_2001112.pdf

Annex 1

Clauses to be removed from the Multiplex C and Multiplex D Licences

Condition 1

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

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

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 Crown Castle to the Independent Television Commission dated 19 June, 26 June, 27 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 the fourth paragraph of the part headed "The Marketing Plan" in section 7 of his Application and in particular:
 - (i) investigate a common kitemark to be awarded to manufacturers selling digital television receivers which meet a minimum functionality specification;
 - (ii) provide a consumer information telephone call centre, with postcode information and related advice on any aerial upgrade needed; and
 - (iii) 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

A1.5 Delete Annex B, Part 1