

## **ITV's RESPONSE TO THE OFCOM CONSULTATION ON ITS REVIEW OF THE RULES ON PARTY POLITICAL AND REFERENDUM BROADCASTS**

This response is submitted by ITV Plc ("ITV") with the approval of STV and UTV and therefore represents the views of all Channel 3 licensees in England, Wales, Scotland and Northern Ireland. STV and UTV will address certain particular issues relating to Scotland and Northern Ireland separately with Ofcom.

ITV welcomes the opportunity to comment on the proposed new PPRB Rules and Guideline Procedures. ITV notes that the proposed Rules and Guidelines are more detailed than the current Rules and impose a greater burden on the licensees affected, in terms of administration and also potentially the amount of time to be allotted to PEBs in the schedule. They also fetter the discretion given to broadcasters under the existing rules, a discretion which has been exercised responsibly and largely without incident.

ITV's comments on the proposed Rules and Guideline Procedures are as follows:

### **The proposed PPRB Rules**

#### **Paragraph 3**

We agree that political parties should be notified promptly and in writing as to the allocation, length and scheduling of PEB broadcasts. However, we believe explanation of the basis for the relevant decision should necessarily be brief and principally by reference to the criteria previously indicated to the political parties. We suggest the rule in paragraph 3 should therefore refer to "setting out briefly the basis...etc". Licensees should not be obliged to enter into detailed correspondence with a number of political parties across the nations of the UK regarding their PEB allocations. A simple explanation should suffice and give a party/organisation sufficient information to make further representations if it so wishes.

#### **Paragraph 4**

We welcome Ofcom's view that any disputes over PEB allocation should be a matter for the broadcaster and party to deal with initially, with Ofcom determining disputes only where they remain unresolved.

#### **Paragraph 6**

Guidance to parties on technical matters is a standard procedure for broadcasters, but broadcasters should not be expected to provide detailed guidance on the acceptability of content to political parties. This creates a further burden and expectation on broadcasters. In our view a simple reference to the Broadcasting Code and related guidance on the Ofcom website should suffice. Broadcasters will of course explain to parties the reason for any changes required should they deliver PEBs that are not in the broadcaster's view compliant with the Broadcasting Code.

#### **Paragraph 13**

This paragraph now states the criteria under which other registered parties "should" qualify for a PEB (not "may" as per the current rules). We think this change is an unnecessary fetter on discretion, although we do not think this represents a fundamental change in the practice currently already adopted by broadcasters.

We believe Ofcom should take this opportunity to reconsider the “one sixth” criteria in relation to the nations other than England. Although one-sixth of England’s 529 constituencies is a reasonable qualifying threshold, it is in our view too low, particularly in Wales, where one sixth of 40 constituencies produces a threshold of just 7 constituencies. This leaves broadcasting in Wales vulnerable to exploitation by small parties with minimal support that field 7 candidates with the primary purpose simply of gaining a PEB. In our opinion this does not serve the democratic process or the public interest. The threshold of “one sixth” currently means that ITV has to make provision for a large number of potential qualifying parties, placing excessive pressure on the schedule in order to be able to accommodate them. These very small parties, which need not have any prior connection with Wales, usually have very limited resources and have difficulty delivering a PEB that complies with the Ofcom Broadcasting Code and ITV’s technical requirements in the required timeframe. This was the case for example during the 2005 General Election, when a party based in Norwich qualified for a broadcast in Wales.

Broadcasters also face the risk of a well-funded single issue small party fielding candidates purely to meet the minimum criteria, submitting a PEB containing material that knowingly breaches the Ofcom Code, and then making a legal challenge to the broadcasters’ refusal to broadcast as a route to publicity. As England and Wales form a single legal jurisdiction, Wales offers a relatively easy route to a high profile hearing in the High Court.

ITV therefore suggests the threshold in Wales should be one half of the seats up for election, and proposes that paragraph 13 should be reworded accordingly. We believe similar consideration should also be given to the threshold in Scotland and Northern Ireland.

#### **Paragraph 14**

Although this paragraph is new, we accept that it largely reflects what broadcasters are already doing in terms of the number of PEBs allocated. We also agree that the obligation on licensee should be to “consider” making additional allocations of PEBs, not an absolute obligation to allocate. However, we feel that scheduling may become more difficult and we see no reason why broadcasters should have to consider peak-time scheduling for other than the major parties. For the same reason, we believe that nothing in the Rules should fetter the broadcaster’s discretion over the dates of PEB broadcasts during the election period.

#### **The proposed Guideline Procedures for the determination of disputes under the PPRB Rules**

#### **Paragraph 3**

We refer to our comments on paragraph 3 of the revised Rules above.

#### **Paragraph 11**

If the party is offered a second round of representations, we believe the broadcaster should likewise be offered an opportunity to respond to that second round of representations, in line with Ofcom’s procedures for handling fairness and privacy complaints.

#### **Paragraph 16**

We agree that Ofcom’s reasoning for its decision should be set out in writing for the parties, including any legal basis for the decision where relevant. For example, where Ofcom decides to countermand the broadcaster’s allocation decision and directs a particular allocation or the scheduling of PEBs in a particular manner, it would be useful to know the factual and legal basis on which it is making these decisions.

**Paragraph 18**

We believe there should be a right of appeal for both parties. Notwithstanding the short timelines involved in the determination of a dispute, we believe it is both fair and practicable to include an emergency appeals procedure in the Guidelines, given the only other recourse in such a situation would be an application for judicial review, which would be expensive, onerous and disproportionate.