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28 November 2008

Dear Sirs,

**Ofcom's Second Public Service Broadcasting Review: Phase Two: Preparing for the Digital Future**

The Scottish Government welcomes the opportunity to respond to the consultation on the second phase of the review of public service broadcasting. We fully appreciate the significance of the opportunity to reshape television services to meet the aspirations of audiences in the face of increasing problems with the current model. The in-depth independent investigation by the Scottish Broadcasting Commission into the state and future of the sector in Scotland has created a firm base of evidence on which this response is structured. The unanimous welcome given to the Commission's work by the Scottish Parliament demonstrates the degree of consensus which has been established around implementing its recommendations. We look forward to final recommendations from Ofcom to the UK Government which locate this way forward for Scotland within a new UK framework.

Our response to the consultation is confined to the questions within the section on nations, regions and localities and that on short-term regulatory decisions. The implications of these comments for other aspects of the Review will be apparent.

**The models in the nations, regions and localities**

***(1) Do you agree with our findings that nations and regions news continues to have an important role and that additional funding should be provided to sustain it?***

**Programmes for Scotland**

We do agree with this proposition, although it does not go far enough in reflecting the views of Scottish audiences.

The Ofcom Review so far has gathered evidence that audiences in Scotland particularly value the current provision of Scottish news but place a lower value on

the Scottish non-news programmes currently provided. It is incorrect to assume from this that programming other than news for Scotland is of little importance.

On the contrary, research conducted for the Scottish Broadcasting Commission demonstrates that audiences in Scotland are less satisfied with the current level of provision of other key genres of programmes about Scotland. Research conducted on a statistically representative sample of over 1,000 people in Scotland for the Scottish Broadcasting Commission<sup>1</sup> found that between forty and sixty per cent of those asked considered there to be insufficient Scottish coverage in the following genres:

- history and heritage;
- other factual and documentary programmes;
- comedy and sitcoms; and
- programmes on music, books, art or dance.

All of these deficits are considerably higher than the (still significant) quarter of people surveyed who thought there were too few Scottish news programmes.

It is reasonable to conclude that audiences in Scotland do attach a high value to a wide range of kinds of public service broadcasting about their country. The lower value placed on current offerings other than news seems likely to reflect the very limited current provision of Scotland-specific non-news programming rather than a fundamental lack of interest in those kinds of programmes.

This conclusion is strongly supported by the substantial body of other evidence gathered by the Commission. Programme makers and creative people have a wealth of compelling stories to tell about Scotland and the world, and a hugely impressive record of engaging big audiences in other creative forms. There is an appetite and confidence to extend this success to TV by overcoming the structural barriers to doing so.

A more detailed analysis of Ofcom's own evidence further supports this. While audiences in Scotland attach a somewhat higher importance to news about Scotland than non-news programmes, (average ranking 7.9 compared to 6.4 out of 10), the gap in satisfaction between importance and current provision is slightly larger for non-news than news (3.3 compared to 3.1)<sup>2</sup>.



<sup>1</sup> <http://www.ofcom.gov.uk> ■ Importance rating: 10/9/8/7 ■ Satisfaction with PSB channels as a whole: 10/9/8/7

<sup>2</sup> Information from Ofcom PSB Tracker survey 2007: supplied to the Scottish Government by Ofcom

The Scottish Government concludes that there is a vital role for public service broadcasting about Scotland, both news and non-news. A successful settlement for the future of the UK's PSB cannot take as its gold standard a current system which has under-provided Scottish content and in which the level of plurality across news but more particularly non-news has been drastically cut back over recent decades.

## **Funding**

We share Ofcom's conclusion that a situation where the BBC was the sole provider of public service content above market levels would offer inadequate range, diversity, innovation, flexibility and – for news and current affairs – democratic scrutiny. The Commission's evidence mirrors and reinforces Ofcom's analysis that commercial pressures in the current system will only exacerbate the deficits in Scottish PSB. The Scottish Government therefore believes that any successful model for the future of the UK's PSB needs to provide additional funding to sustain plurality in Scottish news and to address serious deficits in non-news provision. Decisions around the source of such funding are rightly primarily political.

### ***(2) Which of the three refined models do you think is most appropriate in the devolved nations?***

## **Basis for solutions**

The conclusion that audiences in Scotland demand and deserve higher quantity and quality across a range of genres of programmes about their country underpins our assessment of the most appropriate model for the future of public service broadcasting.

A full and acceptable solution cannot solely protect some of the existing news slots. We agree with Ofcom on the importance of plurality as a mechanism to increase range, diversity and quality. A future model for UK public service broadcasting should include a source of competition to BBC Scotland across the wide range of genres where audiences in Scotland are under-served.

## **Scottish Network**

The Scottish Broadcasting Commission's expert view was that a new Scottish Network consisting of a digital channel and online dimension is the appropriate solution to plurality in public service broadcasting. Such a network would offer the following benefits to UK public service broadcasting over its alternatives:

- provide space for the full range of programmes audiences want to see, unrestricted by the limitations of an opt-out system;
- create a home for high-quality Scottish content across all genres, enabling viewers to find programmes they want and come across those they might not plan to watch but discover they enjoy;
- offer a secure and sustainable solution to the current deficits in Scottish broadcasting, not contingent upon the uncertainty around the Channel 3 network's future as a public service broadcaster and complementary to

Channel 4's natural role as an alternative voice in UK-wide public service programming;

- establish a distinctive brand and identity associated with quality, innovative Scottish broadcasting that would drive competition for standards and audiences from other providers;
- make a contribution to public service broadcasting across the UK (and beyond) by creating television that will appeal to many with links to or an interest in Scotland and who live elsewhere;
- strengthen the capacity to make programmes within Scotland, making it easier for other broadcasters and regulators to address their acknowledged deficits in Scottish-sourced production; and
- provide a creative space and a proving ground which will be a source of new talent whose careers will enrich broadcasting in Scotland, the UK and beyond.

In addition to these there are the wider economic, social and educational benefits which strengthen the Scottish Government's support for the proposal.

We see the Scottish Network as the right solution to Scotland's public service broadcasting deficit. Within the current constitutional settlement, it provides a missing piece in the jigsaw of the UK's public service broadcasting.

This view is shared by the Scottish Parliament which voted unanimously that it '...welcomes the key recommendation for the creation of a new public service Scottish digital network...' on 8 October 2008<sup>3</sup>.

### **Ofcom models for PSB**

The three revised models proposed for discussion in the latest phase of the Review are helpful in moving forward thinking around structures for delivering the UK's public service broadcasting objectives. We appreciate that much of the work underlying this phase of the review was carried out before the Scottish Broadcasting Commission published its final report and we can therefore understand why all of the three models need some refinement to incorporate the Scottish network solution. (It is also important to note that Ofcom's research with the public in Scotland was carried out before the Scottish Broadcasting Commission report was published.) Our understanding is that all three models could, with more or less adjustment, accommodate this solution. Recommendations as to which of these further adjusted models offers the best UK-wide solution is something we are happy to entrust to the Ofcom process, with the caveat that it would seem beneficial to maintain, in the ecology, commercial broadcasting in Scotland as well as public service broadcasting. The Scottish Government has no objection in principle to any of the adjusted models.

For clarity, here is a summary of the adjustments that would be needed to each of the three models.

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<sup>3</sup> <http://www.scottish.parliament.uk/business/officialReports/meetingsParliament/or-08/sor1008-02.htm#Col11615>

### ***a) refined evolution model***

The Scottish Broadcasting Commission was clear in its recommendation that the Scottish Network should be established on a not-for-profit basis to ensure accountability for public funding and to embed an ethos of public service through quality broadcasting. Under the refined evolution model, the establishment and funding of such a channel would therefore be additional to new funding for Channel 3 licences operated on a commercial basis. As the new Network would offer news and current affairs programming, the purpose of further public funding for Scottish Channel 3 licences would therefore be something other than the avoidance of a BBC monopoly in these genres for Scotland, though it would contribute to plurality.

### ***b) BBC / Channel 4 and competitive funding models***

From the perspective of a devolved nation, both of these models are points upon a continuum where public service obligations in return for explicit or implicit subsidy are offered to both Channel 4 and through competitive funding. Both as set out in the Review involve some degree of competitive funding to address public service deficits in the nations.

The Scottish Broadcasting Commission's assessment that the need for enhanced public service broadcasting for Scotland is greater than that identified so far in the Review leads to the conclusion that a Scottish Network rather than tendered services for carriage on other channels is the appropriate solution to Scotland's public service broadcasting. This similarly underpins the identification of the need for secure public funding for that broadcaster, as the scale of the gap to be filled is too large to be well addressed by the uncertainties of a periodical tendering process. It would be possible to adapt both models by re-allocating those components currently identified as competitive funding for Scottish services to form the basis of uncontested funding for the publicly owned Scottish Network. While the current consultation document does not quantify the value of these competitive funds, it is likely that a fuller assessment of the PSB deficit leads to somewhat greater funding required – estimated by the Commission as around £75m per annum. Again, the source of such funding is a question primarily for Governments – a balanced view of needs and of structures to address those is the purpose of the PSB Review.

### **Audience support for a Scottish Network**

The deliberative research undertaken as part of the Review into audiences' preferences amongst the three models is worth addressing. The research is of some interest; however, crucially from the perspective of this submission, it did not offer the option of a new Scottish public service digital channel. Again, this is understandable given the timing of this phase of the Review. But it limits its value for decision making. The finding that those questioned in the devolved nations were considerably more likely to favour the refined evolution model than those in England could have several plausible explanations, including that:

- the public service content of the Channel 3 licence-holders is more highly valued in the devolved nations;

- there is public scepticism about the capacity of competitive funding mechanisms to make programmes they want to watch; or
- people like national channels with a distinctive identity and remit;

Some of these hypotheses favour a new Scottish Network while others would point to alternative solutions – this research alone offers no insight into which is true.

More directly useful is the public attitudes research conducted by the Scottish Broadcasting Commission. 82% of those asked would be interested in watching a new Scottish television channel, 42% very interested. A wide spread of genres were identified as those that people would be most interested in seeing featured on such a channel.

Converting that interest in principle into audience reach is not something to be taken for granted, and would set a creative challenge to those running a new Network. But the level of enthusiasm for taking on such a challenge was a consistent feature of the evidence gathered by the Commission.

More work to flesh out the audience proposition, targeted reach and funding requirements of a new Network will be needed. We are happy to participate in that process. The foundational argument and the level of public support for an ambitious solution is compelling.

### ***(3) Do you agree with our analysis of the future potential for local content services?***

#### **Local television**

We are in broad agreement with the analysis offered by the Review. Local public service broadcasting did not form a core part of the plans developed by the Scottish Broadcasting Commission for implementation at a Scotland-wide level. But we are aware of interest in several regions and localities in developing services sustained by local public, private and community support; and of the level of audience interest in content about their locality. We therefore support the work being undertaken by Ofcom and stakeholders to investigate how to maximise the technical broadcasting capacity for local television. It is right that Ofcom's allocation of spectrum should not hinder local initiatives for television services but instead should offer these a fair wind. It would not seem right that, where these local initiatives have public service at their core, that they need to compete in an open market for spectrum.

For the Scottish Network, the Commission proposed that Ofcom identify and provide suitable gifted or discounted spectrum as appropriate regulatory support to a public service broadcaster. While – to repeat – a network of local services is not put forward as a core part of the Network, if there is technical capacity to achieve a very high level of coverage for the core digital channel while configuring spectrum allocation in such a way as to enable local television providers to acquire spectrum and offer services as opt-outs from the schedule outwith peak times then this could have public benefit. Such possibilities should be considered by Ofcom in any analysis of spectrum provision for the Network.

## **BBC Alba**

Although not a local service, BBC Alba is discussed in this section of the Review. The successful launch of the channel represents a substantial achievement and a significant new service for the Gaelic community and wider audiences. The Scottish Government remains anxious that the BBC Trust extends carriage to Freeview to maximise the channel's audience reach and to give it a fair platform to achieve the audiences for which it aims. We also agree with the Scottish Broadcasting Commission that the current split between funding responsibility and accountability for MG Alba is unsatisfactory and should be resolved through devolution of executive functions relating to MG Alba.

### **Regulatory decisions for the short term**

**(1) Do you agree that our proposals for 'tier 2' quotas affecting ITV plc, stv, UTV, Channel TV, Channel 4, Five and Teletext are appropriate, in the light of our analysis of the growing pressure on funding and audiences' priorities? If not, how should we amend them, and what evidence can you provide to support your alternative?**

### **Channel 3 licences**

As communicated in the Scottish Government's submission to the first phase of consultation, we are concerned by the proposals for reductions in the public service obligations associated with the two stv licences. In the short-term declining public service obligations for Channel 3 license holders is detrimental to plurality in Scotland. Ofcom should ensure that the plurality and choice of public service broadcasting remain available and meet the needs of Scotland.

We are also particularly concerned by the proposed merging of the Border and Tyne Tees licences. Ofcom's quantitative and deliberative research, and the high level of public concern, point clearly to the Border region and its Scottish component in particular as being the region where local news and other content is most highly valued and where there is the greatest level of dissatisfaction with the proposed diminution in local content. We expect Ofcom to reflect fully this unique level of public concern in its prioritisation of the public service benefits to be secured against the remaining value of the licences held by ITV plc.

One element of the short-term proposal for Border is a source of specific concern. Public discussion of the revised proposals has recognised the safeguarding of 6 minutes of coverage per evening from the South of Scotland within the Border news programme as a very limited but beneficial measure to reduce the severity of the cutback in regional public service broadcasting. It is apparent from the Phase 2 Review document that the status of this Scottish component is of questionable robustness. While the other features of the proposed model negotiated between Ofcom and the licence holder are proposed as conditions of the licence, paragraph A1.32 of the Review makes it clear that the commitment to Scottish news is envisaged as an internal one by ITV, 'welcomed' by Ofcom but not made a licence obligation. Urgent clarification is required as to:

- why this commitment is being given a less formal status than it would have as a licence obligation;
- whether the commitment is being given until 2014;
- what robustness such a commitment would have in the event of further commercial pressure upon the licence holder and what consequences would be associated with it not being met; and
- how Ofcom intends to monitor its delivery.

The current Review document does not offer enlightenment on these issues and in the absence of satisfactory answers we have serious concern about the delivery of even the very limited regional public service content for the region proposed by the review.

## **Channel 4**

The consultation proposes the introduction of a 3% quota for production from the devolved nations upon Channel 4 from 2010. While Channel 4's severe under-production from Scotland and the other devolved nations makes the introduction of quota progress of a sort, the level suggested is totally unacceptable.

Channel 4 is clear in its aspirations to strengthen its role as a UK public service broadcaster. The Public Service Broadcasting Review seeks to underpin such a status through identifying options for increased explicit or implicit public funding from UK taxpayers. That aspiration – which we broadly support – must imply an active role in meeting the audience demand for public service broadcasting to reflect their own life and culture to themselves and to others across the country. Similarly, citizens should not see the cultural and economic benefits they are buying through support for Channel 4 overwhelmingly concentrated in London. These principles have now been belatedly accepted by the BBC and it would be deeply disappointing if the same arguments have to be repeated.

The Scottish Broadcasting Commission recommended that Channel 4 be required to produce 8.6% of its UK originations within Scotland. While we recognise that Channel 4's reliance upon independent production creates a slightly different set of requirements for moving production, we agree that a clear plan for timely achievement of a level of production in Scotland proportionate to our share of the UK population should be a condition of Channel 4's future role. We are committed to play our part in creating the conditions for independent production to thrive and are happy to work with Channel 4 and other industry partners to tailor such support.

## **Strategic context for short-term decisions**

On a strategic scale, the picture is clear across Scotland: the current model for provision of public service broadcasting plurality is already failing and rapidly deteriorating further. The gap between audience expectation and experience is greater than in most other parts of the UK and Ofcom's analysis is that the commercial pressure upon the stv licences is more acute than elsewhere. None of the short-term options are attractive or fully satisfactory for meeting public expectations. This segment of the review is framed as making regulatory decisions for a short-term until 2014. In the interim, prior to a new Scottish network being

established, we urge Ofcom to ensure plurality of public service broadcasting is secured in Scotland. It would seem prudent, therefore, that all steps are taken to establish the new network as soon as possible. Six years of managed decline is not an acceptable option. A long-term settlement needs to be agreed and implemented promptly. The Scottish Broadcasting Commission's recommendation was that all its proposals including the Scottish Network should be put in place within four years. We agree with this target. We advocate that such long-term solutions are progressed rapidly by all concerned so as to plug the manifest gaps in public service broadcasting.

yours sincerely  
Linda Fabiani

**LINDA FABIANI**

## Cover sheet for response to an Ofcom consultation

### BASIC DETAILS

Consultation title: **Second Public Service Broadcasting Review: Phase Two: Preparing For The Digital Future Consultation**

To (Ofcom contact): Vicki Nash, Director, Ofcom Scotland

Name of respondent: Linda Fabiani, Minister for Europe, External Affairs and Culture

Representing (self or organisation/s): The Scottish Government

Address (if not received by email):

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Please tick below what part of your response you consider is confidential, giving your reasons why

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