



UNITED FOR LOCAL TELEVISION  
Consultation Response

*“The Future of Digital Terrestrial Television”  
Ofcom consultation published 21/11/07*

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## Foreword

United for Local Television calls on Ofcom and Government to initiate a debate across the nations and regions of the UK on the case for a “sixth” public service television network to address clear evidence of market failure in existing commercial provision.

A “sixth” public service network could:

- be operated by local companies in the micro regions of the UK, enhancing regional production, employment & advertising opportunities;
- provide local news & information targeting at least 50 micro regions – as well as dedicated programming for the UK’s nations and regions;
- enhance the provision of under-served public service content such as children’s, educational, arts, cultural and religious programming;
- promote media literacy, participation and active citizenship; and
- end the monopoly of the incumbent PSB operators over universal multiplex capacity, enhancing plurality of broadcast outlets in the interests of viewers and advertisers.

Ofcom’s General Duties require it to give due consideration to the “*the fulfilment of the purposes of public service television*”. This is a much wider requirement than merely considering the future of the main five incumbent analogue PSB operators.

Ofcom’s recent DDR research reported a greater level of consumer demand for “*local TV on Freeview*” than any other new use of the UHF spectrum – just ahead of “*additional SD*” on Freeview” and markedly higher than for “*HD on Freeview*”. Ofcom must not ignore evidence of public demand when re-assigning the only terrestrial broadcasting capacity which will have universal reach post-DSO.

Whilst support for local TV is high across all ages and demographics, those who are most sceptical about digital technology are also the group that are most enthusiastic about local TV. This is why it is unacceptable to suggest that local TV should be consigned to the internet. Research clearly suggests that the addition of a local channel on DTT would provide a positive reason to switchover for many of the most ardent ‘digital avoiders’.

It is important Ofcom does not purely base its plans on the ‘upgrade’ of the DTT platform on the wishes of the most committed technophiles and the UK’s heritage broadcasters. Ofcom must also consider the wishes of the majority who care most about quality content that impacts on their every-day lives.

Until an extensive consultation has taken place on the case for “Channel 6”, it would be prudent for Ofcom to use its regulatory powers to reserve capacity on a universal multiplex for the provision of a new public service network serving the nations, regions and localities of the UK. In the event that, following the PSB review, this capacity is not required, it could be re-assigned to an incumbent PSB operator or other party.

UK citizens are amongst the least well served in the democratic world for access to local news and information from television. This submission sets out why we believe Ofcom and Government must now take positive action to ensure local TV is part of the future of DTT.

**Jaqui Devereux**  
**Spokesperson, United for Local Television**

# Section 1 – Executive Summary

## THE FUTURE OF DTT CANNOT BE DIVORCED FROM THE FUTURE OF PSB

- 1.1 This submission urges Ofcom not to take any decision on the future use of DTT multiplex capacity until there is greater clarity on the future funding and institutional arrangements for PSB in the UK.
- 1.2 Ofcom's PSB review must retain, as one credible option, the ability to mandate that new public service networks gain access to DTT multiplex capacity. To assign all universal multiplex capacity now would risk making a mockery of any future consultation on the PSB review. Ofcom would have little or no room for manoeuvre in discussions with incumbent PSB operators who could, in theory, hold the Government to 'ransom' over their ongoing PSB obligations.
- 1.3 In particular, Ofcom must undertake a comprehensive consultation on "the future of local TV" as an urgent priority. The issues which it is important to consult upon are set out in this submission and, to assist Ofcom, are also summarised in Annex 7.

## SETTING OUT THE CASE FOR CHANNEL SIX AND ADDITIONAL 'ULTRA LOCAL' SERVICES

- 1.4 Section 3 of this submission examines recent examples of the evidence of demand for a new public service network focused on the nations, regions and localities of the UK.
- 1.5 Later, section 9 explains how Channel 6 could be complemented by hundreds of 'ultra local' services broadcasting from relay sites across the UK.

## HOW OFCOM HAS MISINTERPRETED THE CASE FOR LOCAL TV

- 1.6 Ofcom has not yet considered the case for Channel 6 (or any other new public service networks) being granted access to universal multiplexes. However, in recent months Ofcom has considered whether intervention might be justified to develop DTT, including local TV, within the so-called 'digital dividend' spectrum.
- 1.7 United for Local Television suggests that Ofcom's DDR analysis contains a number of material flaws. This submission seeks to correct the main errors within Ofcom's analysis in order to enable the regulator to reach an objective conclusion to its PSB review and future DTT policy.
- 1.8 This submission explains in detail how Ofcom has, in recent consultations and statements, misinterpreted:
  - the legal status of Multiplex B and a number of its own broadcasting duties (section 2);
  - the risks of market failure in local TV provision on DTT (section 4);
  - the opportunity costs of reserving capacity for local TV on DTT (section 4);
  - the business case for local TV on DTT relative to the internet (section 5);
  - the main incremental social benefits of providing local TV on DTT (section 6); and
  - the technical flexibility of using add/drop (section 8).

## **HOW ADD/DROP 'ADDS UP' TECHNICALLY, FINANCIALLY AND LEGALLY**

- 1.9 Section 8 explains why 'add/drop' adds up and how this technology is the most simple and effective method to deliver a new sixth public service network across the UK, offering high quality, financially viable, local TV programming.
- 1.10 Section 7 explains how a new Channel 6 network might be introduced within a simple and effective legal framework, already envisaged by Government in the CA03.

## **WHY IT IS TOO EARLY TO REACH ANY CONCLUSION ON T2**

- 1.11 Section 10 explains why it is much too early for Ofcom to take any decisions on T2, which is unlikely to become commercially available until around 2011. The section also explains why Ofcom's proposed re-organisation of the DTT platform fails to maximise the public interest or even spectral efficiency.

## **TIME FOR A DEBATE ACROSS THE NATIONS AND REGIONS**

- 1.12 There is a strong case for decisive action to enhance competition and plurality on the DTT platform.
- 1.13 There is no functioning competitive market for DTT multiplex capacity. Without reserved access to this capacity, the main beneficiary of direct funding to support new public service entrants would be incumbent operators, not programme makers. Public funds would be diverted from the tax payer in order to 'buy back' capacity at a spectacular premium. This would not represent an efficient use of public funds.
- 1.14 United for Local Television urges Ofcom to involve the nations and regions in an extensive debate regarding the future of DTT examining what public service content might be made available in the future on a UK, nation, region and local 'universal' basis. United for Local Television urges that no decisions be taken on the re-allocation and/or re-assignment of existing DTT multiplex capacity until the completion of this debate and Ofcom's PSB review.

## **Section 2 – PSB principles, threats and opportunities**

### **OFCOM'S STATUTORY DUTY IS TO PROMOTE THE PURPOSES OF PSB. NOWHERE DOES LEGISLATION GIFT A MONOPOLY OF UNIVERSAL MULTIPLEX CAPACITY TO DESIGNATED PSB OPERATORS.**

#### **GOVERNMENT POLICY HAS LONG FAVOURED A NEW LICENSING REGIME FOR LOCAL TV ON DTT**

2.1 The development of local TV is a long-standing policy goal of the current Government. This policy was confirmed by Culture Secretary, Tessa Jowell, who wrote to Milestone Group in March 2003:

*"...the Communications Bill provides for a licensing regime...when digital spectrum becomes available... The regime will be flexible enough to ensure that we have different kinds of local service: commercial and community channels. We envisage that these services will be included on a digital television multiplex."*

2.2 Labour Party policy has favoured assigning multiplex capacity to local TV since 1995 when Graham Allen, then shadow Broadcasting Minister, told Parliament:

*"History, unfortunately, will judge that this Government have consistently failed to encourage local television... We will explore ways in which to empower the ITC to ensure a strong, local element in a modern, diverse and democratic media. We will ensure that the digital revolution can spawn many local channels. That, again, will be a suitable complement to Labour's devolution of power to the localities, regions and nations of the United Kingdom. Sadly, this Government's broadcasting policy has meant that television has been degraded."<sup>1</sup>*

#### **OFCOM'S GENERAL DUTIES REQUIRE IT TO CONSIDER PUBLIC SERVICE TELEVISION BEYOND THE FIVE INCUMBENT NETWORKS**

2.3 Ofcom's General Duties require it to have regard for, inter alia:

- the desirability of promoting the fulfillment of the purposes of public service television broadcasting in the United Kingdom;
- the desirability of promoting competition in relevant markets;
- the different needs and interests, so far as the use of the electro-magnetic spectrum for wireless telegraphy is concerned, of all persons who may wish to make use of it;
- the needs of persons with disabilities, of the elderly and of those on low incomes;
- the desirability of preventing crime and disorder;
- the opinions of consumers in relevant markets and of members of the public generally;

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<sup>1</sup> Source: *Hansard*, 1995

- the different interests of persons in the different parts of the United Kingdom, of the different ethnic communities within the United Kingdom and of persons living in rural and in urban areas.
- 2.4 None of these duties are restricted to the five principal broadcasters granted formal “PSB” status.<sup>2</sup> Ofcom has a much wider duty – to promote “*the fulfillment of the purposes of public service television*”.
- 2.5 Ofcom is now proposing to use its regulatory powers (with the support of Government) to re-organise the DTT platform. If Ofcom fails to act in a manner designed to ensure multiplex capacity is assigned to the services most demanded by citizens and consumers, it will be failing in its core statutory duties.

### DTT REMAINS FUNDAMENTAL TO THE FUTURE PROVISION OF PSB

- 2.6 In the Foreword to the consultation document<sup>3</sup>, Ed Richards wrote:

*“Under the Communications Act, Parliament gave Ofcom important responsibilities for the regulation of DTT. These are wider and deeper than our responsibilities for other television platforms, reflecting the role that DTT has in making PSB content available to all.”*

- 2.7 United for Local Television supports and welcomes the continued development of the DTT platform. However, United for Local Television believes that Ofcom and Government must also take positive action to ensure free-to-air terrestrial TV continues to fulfil wider public policy objectives. There is a strong danger that the public service obligations of incumbent PSB operators will be further diluted in the run up to DSO and beyond, particularly in relation to regional news and current affairs.
- 2.8 UK citizens are amongst the least well served in the democratic world for access to local news and information from television. There is a high risk the market will continue to fail to deliver local public service television channels (“*local TV*”) without positive action by Ofcom and Government.
- 2.9 The three so-called “*PSB multiplexes*” use spectrum that is gifted to them for the purpose of ensuring universal access to public service television<sup>4</sup>. There must, therefore, be a moral and legal duty upon Ofcom to ensure universal multiplex capacity is used to maximise the delivery of the purposes and characteristics of public service television.<sup>5</sup>

### PSB PLURALITY IS POTENTIALLY THREATENED BY DSO

- 2.10 There is a potential tension between Ofcom’s policy of opening up markets and its policy of securing universal access to UK originated, high quality, public service content. Resolving this conflict will be a key objective for Ofcom’s second PSB review.
- **BBC:** The BBC is at the forefront of the provision of PSB in the UK. However, even this organisation is currently undertaking a radical restructuring of its

<sup>2</sup> i.e. the BBC, Channel 3, Channel 4, Channel 5 and S4C – in this submission usually referred to as the “*PSB operators*”

<sup>3</sup> Source: *The Future of Digital Terrestrial Television – Enabling new services for viewers*, Ofcom, November 2007 (also referred to in this submission as the “*consultation document*”). The terminology used in this submission is in line with Ofcom’s consultation document, unless otherwise stated.

<sup>4</sup> DTT multiplex reach has been determined by Ofcom in light of its General Duties. In this submission, any of the DTT three multiplexes with 98.5 per cent target reach at DSO is generally referred to as a “*universal multiplex*”.

<sup>5</sup> The term “*public service content*” is used in this submission to refer to programming specifically intended to fulfil the characteristics and purposes of public service television as detailed by Ofcom in its phase 2 review of PSB published November 2004.

news operations and reportedly considering options for reduced reliance on the licence fee. There is widespread concern the BBC should not become a 'monopoly' provider of core PSB genres.

- **Channel 3:** For many years ITV licensees were autonomous regional operations. Today, Channel 3 service providers in England and Wales are separate entities in name only. The business case for sub-regional news on ITV1 is increasingly difficult to justify, at least partly because ITV1 is unable to repeat such programming within its networked peak-time schedule. ITV plc has publicly announced it aims to halve its expenditure on regional news, either by cutting the number of regions served or by reducing programming quality (or a mixture of the two). ITV has already severely cut its religious, children's and regional programming. It is the stated policy of ITV plc's Executive Chairman to reduce commissions to independent producers so that the vast majority of programming is brought in-house.
- **Channel 4 Television:** Some critics have suggested Channel 4 faces an identity crisis as it strives to decide whether it should overtly compete with ITV to maximise commercial impacts or transform itself into a "Mini-Me" version of the BBC supported by indirect or direct subsidies.<sup>6</sup> Ofcom is set to explore the long term funding and institutional arrangements for Channel 4 as part of its second PSB review.
- **Channel 5:** Five is not expected to make a material contribution to the core characteristics and purposes of PSB post-DSO, beyond out-of-London original production.

## IMPORTANT GENRES OF PSB PROVISION ARE ALREADY UNDER-SERVED

- 2.11 Already, original UK children's content is facing a crisis in the UK. Ironically, children's properties can be highly lucrative for producers, with the majority of revenue emanating from merchandising rather than broadcaster fees. Traditionally, producers of certain types of children's content have been willing to supply their content to broadcasters for a nominal fee, in return for a commitment it is broadcast in prominent slots.<sup>7</sup>
- 2.12 Regional and sub-regional news and current affairs appears set to follow children's programming as the next public service genre in 'crisis'.
- 2.13 Former Ofcom CEO Stephen Carter, now strategy chief to the Prime Minister, told The Guardian in 2006 he believed Ofcom should be considering a new tier of local TV to replace ITV's regional programming:

*"If we had completely withdrawn all obligations on ITV in relation to non-news regional programmes, for example, the debate around alternative provision would have been much sharper. It would have helped the debate on whether a new alternative version is needed, on a local level beyond the BBC."*<sup>8</sup>

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<sup>6</sup> Or a hybrid or other alternative. Channel 4 has announced it intends to reveal its own 'vision' in the Spring. The question as to whether or not Channel 4 should be privatised resurfaces every few years. Some have suggested the channel could cut its costs by merging with another broadcaster. Others argue that the essential character and nature of Channel 4 requires protection of its 'not for profit' status together with a degree of direct or indirect subsidy. Channel 4's net advertising revenue was 19.2 per cent of the total TV market in 2006, less than half of ITV (who commanded 42.5 per cent of the market), demonstrating the need for a strong commercial competitor to ITV whatever the institutional arrangements for Channel 4 (source: *The Communications Market 2007*, Ofcom, August 2007).

<sup>7</sup> One of the reasons why pre-school animation is more prevalent than older children's factual or drama content. Such content could be further hindered by the new AMVS Directive only allowing commercial breaks in children's programmes longer than 30 minutes (source: *EU to allow product placement on TV*, The Guardian, 30 November 2007)

<sup>8</sup> "The Restless Regulator", *The Guardian*, 9 January 2006, interview by Maggie Brown

## **CONTESTABLE FUNDING IS NOT A SENSIBLE SOLUTION TO UNDER-SUPPLY UNLESS A RANGE OF COMMERCIAL PUBLIC SERVICE OUTLETS ARE AVAILABLE**

- 2.14 It is widely assumed that Ofcom's second PSB review will want to consider a range of possible options – including direct funding of content that may be under-supplied by the market. However, funding is only a small part of the PSB jigsaw.
- 2.15 There is questionable value in funding the production of programmes which are not broadcast on the universal multiplexes. If the universal multiplexes are monopolised by only a handful of broadcasters, they will largely dictate which programmes are broadcast and on what terms (including financial terms). A small 'cartel' of PSB operators, with their own commercial interests, may not deliver maximum value to the UK public.
- 2.16 Contestable funding will never be a truly fair contest if the only networks able to offer universal coverage are the same operators who previously monopolised all analogue spectrum. For any sensible contest to take place, there have to be a plurality of non-BBC outlets committed to PSB and available on a universal basis. If there is not a fair and transparent competition for any contestable funding, this could have serious implications for the range and diversity of programmes commissioned.<sup>9</sup>

## **CONTESTABLE FUNDING WILL NOT DELIVER LOCAL TV**

- 2.17 To persuade an existing broadcaster to produce content outside of its core genre is likely to require a financial inducement tantamount to a bribe.
- 2.18 If there is demand for local TV in 50+ sub-regions of the UK, commissioning new independent regional content every evening, then this cannot be delivered by contestable funding. A diversity of local programming, satisfying public thirst for local content, can only be delivered by a local TV service. Using public funds to 'buy back' DTT capacity (at an inflated premium) which had previously been foolishly gifted by Ofcom for non-public purposes does not represent an efficient use of public funds.

## **THE FUTURE OF DTT CANNOT BE DIVORCED FROM THE FUTURE OF PSB**

- 2.19 Ofcom cannot divorce the future of DTT from the future of PSB. Simply recreating the analogue monopoly enjoyed by the incumbent PSB operators on the universal multiplexes is highly unlikely to represent the public interest. Increasing competition between public service providers could be essential in ensuring the terrestrial platform maximises its contribution to the achievement of public purposes in the coming decades.
- 2.20 Decisions taken by Ofcom now on the allocation and assignment of universal multiplex capacity could have a lasting impact on the future broadcasting ecology of the UK.

## **HOW DOES LOCAL TV DIFFER FROM REGIONAL TV?**

- 2.21 ITV plc policy appears to be to deliberately short-change the demand for local TV by reducing its regional programming to the bare minimum acceptable to Ofcom. ITV's policy is to effectively 'write off' half an hour on the outskirts of its peak-time schedule by halving the cost of its regional news and moving ad minutage to other times in its schedule.
- 2.22 In contrast to both ITV and BBC, local news will be the flagship output on a local TV channel and take pride of place in its peak-time schedule. The main differences between local TV and regional TV are considered further in section 6.

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<sup>9</sup> In any case, there is considerable political opposition to the concept of an 'arts council of the airwaves'.

## **OFCOM'S REVIEW OF THE DTT PLATFORM PROVIDES AN OPPORTUNITY TO CONSIDER THE BEST USE OF EXISTING CAPACITY – AS WELL AS INCREMENTAL CAPACITY**

- 2.23 There is no logic or reason for gifting incremental DTT capacity on a universal multiplex to commercial PSB operators with little or no firm commitment to public service provision on their main channels, let alone their multichannel offerings. Such gifted assignments are at risk of looking discriminatory and disproportionate at a time when new channels, with a much more explicit public service remit, also require access to DTT capacity to achieve universal distribution.
- 2.24 The reorganisation of the DTT platform provides an opportunity to Ofcom and Government to review the best use of all multiplex capacity and place new conditions on the universal multiplex operators to protect and enhance the interests of citizens and consumers.

## **IF YOUR AERIAL POINTS TO A RELAY STATION, ALL ENGLISH-LANGUAGE CHANNELS AVAILABLE ARE PROVIDED BY JUST FOUR MAIN SERVICE PROVIDERS**

- 2.25 Under Ofcom's current proposals, a terrestrial viewer whose aerial points to any of the UK's 1,000+ relays will receive no additional plurality of voices post-DSO. The only three universal multiplexes available at these relays will be monopolised by the same four broadcasters who previously monopolised all analogue spectrum.<sup>10</sup> The diversity of broadcasting outlets and voices which is an inherent feature of a modern liberal democracy will not be enhanced by the DSO process for these viewers.<sup>11</sup>
- 2.26 In many cases, viewers of smaller relay stations are amongst those who are least well served by existing regional news coverage, which often focuses on major urban conurbations.

## **OFCOM'S PROPOSED INTERVENTION DOES NOT ADDRESS THE CAUSES OF MARKET FAILURE**

- 2.27 A primary reason for conferring "PSB" status on a commercial channel is to ensure that it provides a mixed schedule, with high quality original content of appeal to a broad range of interests. A service which mainly provides overtly commercial content is a "PSB" channel in little more than name.
- 2.28 Ofcom's first PSB review concluded that: "*The existing commercial PSB model would not be sustainable in a wholly multichannel world...*" and there was likely to be a need for "*new intervention to address deficits*" in the analogue PSB model.<sup>12</sup>
- 2.29 The intervention proposed by Ofcom in the consultation document re-assigns DTT multiplex capacity without addressing the causes of market failure in the provision of public service content. In light of Ofcom's statutory duties, it would appear to be astonishingly imprudent to re-assign all capacity on the UK's universal multiplexes, prior to completing a review of the future of public service content.

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<sup>10</sup> With the exception of the non-English language services in Wales, Scotland and NI, Ofcom proposes to gift all universal multiplex capacity to the five London-based PSB operators.

<sup>11</sup> Some households who currently receive reception from relay sites may be able to receive the three commercial multiplexes if they change their aerials. There are currently no predictions for how many households affected will choose to do this. Still, more than one in ten viewers will only be able to receive the three PSB multiplexes post-DSO on their main sets. This number will be even higher for secondary sets (e.g. kitchen portables) not connected to a roof-top aerial.

<sup>12</sup> Source: *Ofcom's Second Review of Public Service Television Broadcasting – Terms of Reference*, Ofcom, September 2007

## **OFCOM MUST ACT CAUTIOUSLY WHEN ASSIGNING UNIVERSAL DTT MULTIPLEX CAPACITY**

- 2.30 One of the primary purposes of digital switchover is to deliver universal access to public service content on DTT. As a result of policy decisions previously taken by Ofcom and Government, three of the six DTT multiplexes in the retained spectrum will be expected to provide coverage to at least 98.5 per cent of the UK population at the completion of DSO.
- 2.31 The decision as to how universal multiplex capacity should be used is not one that should be taken lightly. Once assigned, it will be difficult or impossible for any new public service entrants to emerge, gaining universal distribution to serve public policy objectives.
- 2.32 Far from proposing a market led approach to the DTT platform, Ofcom suggests gifting universal capacity using 'command and control' to incumbent analogue operators. Ofcom offers no compelling evidence upon which to justify such an anti-competitive approach which would appear highly unlikely to secure optimal spectrum use, or achieve the purposes and characteristics of PSB.

## **THE MOST IMPORTANT QUESTION IS WHAT IS BROADCAST ON DTT, NOT HOW IT IS BROADCAST**

- 2.33 HD content will become available on a near-universal basis in the first half of 2008 when Freesat is due to launch transmissions. Further opportunities to develop HD are available in the digital dividend spectrum. The public value associated with HD will be available to viewers who want it on satellite this year and on other platforms if there is sufficient evidence of demand.
- 2.34 If the DTT platform responds to consumer demand by offering more SD services, rather than HD services, this is an example of the market working rather than the market failing. Ultimately, the success of new DTT technologies (such as T2<sup>13</sup>) will be determined on a global scale, regardless of any immediate decisions taken Ofcom.
- 2.35 The DVB-T platform is currently established and successful. Any attempt by Ofcom to predict the future of the DTT platform is subject to significant risk of regulatory failure. The fundamental question is not whether Ofcom should be intervening to determine the future of DTT **technology** – but rather whether Ofcom should be intervening to protect and enhance DTT **content**. It is this issue which this submission seeks to address in detail.
- 2.36 Ofcom cannot justify intervening in the allocation and assignment of DTT capacity without conducting a fundamental review of the purposes and objectives of such intervention.

## **NEVER HAS PARLIAMENT ASSIGNED ANY OF THE CAPACITY ON MULTIPLEX B TO THE BBC OR ANY OTHER PSB**

- 2.37 Ofcom Partner, Philip Rutnam, wrote to United for Local Television on 19 December 2007:

*“...I should point out that these (three universal) multiplexes have been designated expressly as PSB multiplexes. PSB services are defined by Parliament as comprising principally the BBC, Channel 3, Channel 4, and Channel 5.”*

- 2.38 There is no definition of a “PSB multiplex” in legislation – the distinction between “commercial” and “PSB” multiplexes is purely an invention of Ofcom’s own making.

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<sup>13</sup> DVB-T2 referred to in this submission as “T2”

- 2.39 Never has Parliament ever determined that Multiplex B be “*designated expressly*” for the sole use of incumbent PSB operators. Multiplex B was originally intended by Parliament for commercial use by new entrants. The monopolisation of the capacity on Multiplex B by the BBC is the result of an interventionist decision taken by the ITC to award this multiplex to a BBC subsidiary.<sup>14</sup>
- 2.40 The BBC’s application to the ITC for the Multiplex B licence expressly stated that acceptance of any award would be contingent on Multiplex C and Multiplex D being awarded to Crown Castle. Indeed, the BBC’s entire application was in conjunction with Crown Castle. As such, the Multiplex B licence award cannot possibly be construed as a decision by Parliament to expressly designate this multiplex for the exclusive use of the BBC. Rather it was a decision by the ITC to award three multiplex licences to a commercial-led consortium.
- 2.41 Never does legislation suggest Ofcom should have discretion to award capacity on a DTT multiplex by a selection process only open to a cartel of incumbent operators. If a commercial multiplex operator sought to do this it would almost certainly be considered undue discrimination and in breach of the BA96. Ofcom has every right to allow non-PSB operators to access Multiplex B if and when carrying out any re-assignment of this capacity for new services.

**IF MULTIPLEX B CAN BE CLEARED FOR NEW SERVICES THEN THE PUBLIC HAS A RIGHT TO BE CONSULTED ON WHAT THESE NEW SERVICES SHOULD BE, WHETHER HD OR SD, INCUMBENTS OR NEW ENTRANTS**

- 2.42 Ofcom’s proposal to limit access to Multiplex B to designated PSB operators is not supported by any existing legislation and amounts to the creation of a cartel. Protectionism and the denial of competition are difficult to justify in any circumstances but especially when gifting scarce spectrum resource, on behalf of the UK public, worth many millions. If this multiplex capacity ends up being used for HD services, when all available research suggests these are little valued by citizens, then Ofcom could well be in breach of numerous of its statutory duties.
- 2.43 The Secretary of State alone has the power to assign capacity to designated PSB operators. If Ofcom were to refuse to hold a fair, open and transparent assignment process for multiplex capacity under its regulatory control then it could be exposing itself to the risk of judicial review.
- 2.44 Ofcom’s duty is to act in the public interest – not the interest of incumbent broadcasters. It is inexcusable for Ofcom to misrepresent the legal position in order to subvert the optimal use of spectrum, obstruct competition, deny an open and transparent assignment process and abandon its duties to citizens.

**THE MARKET CANNOT BE RELIED UPON TO DELIVER PUBLIC SERVICE PROGRAMMING**

- 2.45 The six-multiplex DTT platform is already dominated by the incumbent PSB operators. There are only 10 peak-time services on the whole of the Freeview platform provided by broadcasters unconnected with the analogue PSBs. These consist of:
- 4 shopping channels;
  - 2 men’s channels (Nuts & Virgin1);

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<sup>14</sup> To date, the only multiplex capacity gifted to PSB operators by Parliament / Government are Multiplex 1, Multiplex 2 and Multiplex A. In fact, the Secretary of State reserves the right to require any BA96 DTT operators reserve capacity for PSB operator services.

- 1 music video channel (FTN);
  - 3 Sky channels, which Ofcom is currently consulting on allowing to become subscription services.
- 2.46 None of these services meet the demand for local news content or new, high quality, productions from the nations and regions of the UK. It would be a disgrace if Ofcom ignored the research which shows people value local content when assigning any new incremental DTT multiplex capacity that become available at DSO.

### **OFCOM SHOULD NOT CLOSE ANY OPTIONS UNTIL IT HAS REACHED PSB POLICY CONCLUSIONS**

- 2.47 The future funding and institutional arrangements for PSB will not purely be determined in the corridors of Whitehall and Southwark Bridge. The establishment of new arrangements is most likely to involve an element of negotiation and compromise involving established broadcasters with diverging interests.

### **OFCOM'S NEGOTIATING POSITION WITH INCUMBENT PSB'S IS REMARKABLY INEPT**

- 2.48 It is remarkably inept for Ofcom to play all of its cards prior to the start of any negotiations with incumbent PSB operators. The threat of one or more new entrants joining the universal DTT platform is likely to be a useful card for Ofcom to play in its discussions throughout the PSB review process.
- 2.49 The proposals set out in the consultation document threaten to leave Ofcom exposed in any future negotiations with PSB operators. The art of compromise usually involves the use of both 'carrots' and 'sticks' as well as diplomacy and persuasion. The gifting (and/or the taking) of universal multiplex capacity worth hundreds of millions of pounds per annum cannot sensibly be implemented before Ofcom's PSB review has concluded.
- 2.50 The preferred method for implementing radical new policies is on the basis of consensus. This is usually best achieved by firstly gaining agreement for broad principles and then moving on to detail. It would be extraordinary to agree the detail of DTT capacity assignments when broad principles are not yet even in place.

### **OFCOM IS IN DANGER OF BEING TAKEN FOR A RIDE**

- 2.51 Ofcom is in danger of being taken for a ride by incumbent PSB operators, effectively inviting them to hold the Government to ransom on the future of universal public service content. One day Ofcom proposes to gift spectrum assignments worth multi-millions, the next day it suggests incumbent operators demand direct funding or other financial inducements of the Government (or risk the public losing core genres of universal content provision).
- 2.52 If Ofcom fails to extract public service commitments from the incumbent operators what is the Government to do? Given the universal multiplexes are capacity constrained, the incumbent PSB operators could seek to demand obscene premiums for showing any public service content, knowing the Government has nowhere else to go. At the same time the BBC can be expected to pull out all the stops to resist 'top slicing' of the licence fee, perhaps threatening to close Salford or some other major initiative of importance to Government.
- 2.53 Ofcom's proposals leave little room for any manoeuvre, short of revoking licences. Usual tactics in negotiations involve deploying a 'good cop' and a 'bad cop' – Ofcom's preferred approach is to cop-out – gifting all universal capacity to incumbents and leaving the public to suffer the consequences. There is no good reason for Ofcom to close down any options

at this stage, including the option to award some or all incremental capacity on the universal multiplexes to new entrants.

## THE INCUMBENT PSB'S ENJOY A DOMINANT POSITION ON THE DTT PLATFORM

- 2.54 The incumbent PSB operators, including their multi-channels, enjoy a near-monopolistic position in free-to-air mainstream broadcasting in the UK. The commercial PSB operators still dominate the vast majority of TV advertising receipts. Ofcom should be encouraging competition for quality and public service on a universal basis – not just recreating the analogue monopoly on DTT.
- 2.55 Given that T2 receivers will not become commercially available until at least 2011, there is little or nothing to be lost from Ofcom implementing a 'joined up' policy approach to the use of universal multiplex capacity intended for the delivery of public service content.

## OFCOM HAS AN OVER-RIDING DUTY TO SECURE DIVERSITY AND QUALITY ON A UK-WIDE BASIS

- 2.56 Ofcom has a statutory duty to seek to secure:

*“...the availability throughout the UK of a wide range of television and radio services which (taken as a whole) are both of high quality and calculated to appeal to a variety of tastes and interests”.*

- 2.57 The main statutory duties Ofcom must implement in relation to broadcasting are:

- **Availability throughout the UK** – the duty to secure universal coverage. For the avoidance of doubt, the relegation of local news to broadband (which is not free or universal) would represent a dereliction of Ofcom's statutory duty to secure *“availability throughout the UK”*.
- **A wide range** – the requirement to secure a wide range of channels, not just 'sister' channels for repeats, time-shifting and 'behind the scenes' style content from a small cartel of incumbents. For the avoidance of doubt, restricting universal DTT capacity to those who previously monopolised analogue terrestrial does not constitute facilitating a wide range of channels. A failure to supply a plurality of core public service genres such as children's programming or local news would represent a dereliction of Ofcom's statutory duty to secure a *“wide range”*.
- **Of high quality** – diversity alone can be achieved through regulatory intervention but diversity and quality together can only be achieved by facilitating competition. A failure to encourage competition in core public service genres, whilst allowing commercial PSB operators to only provide 'tokenistic' public service programmes would represent a dereliction of Ofcom's statutory duty to secure *“high quality”*.
- **Calculated to appeal to a variety of tastes and interests** – the requirement to ensure a variety of tastes and interests are catered for. This would imply many significant interests would be catered for. The assignment of capacity to 'red button' services and/or 'time-shift' or repeat channels does not enhance the supply of content to meet a variety of tastes and interests. It is not for Ofcom to leave variety to chance – it is required to ensure its interventions are *“calculated”* to secure this core objective. For the avoidance of doubt, failing to secure channels catering for content in exceptionally high demand would be a dereliction of Ofcom's statutory duty to secure *“calculated”* variety.

**FOR THE AVOIDANCE OF DOUBT, OFCOM'S PROPOSALS FOR THE REORGANISATION OF THE DTT PLATFORM DO NOT APPEAR CALCULATED TO SECURE ANY OF ITS CORE STATUOTORY DUTIES**

- 2.58 The monopolisation of universal capacity by a handful of broadcasters cannot be guaranteed to achieve any of Ofcom's core broadcasting objectives.
- 2.59 Ofcom's proposal to 'divvy up' the UK's most valuable spectrum to a cartel of incumbent operators reflects a surprisingly cavalier approach to securing its core statutory duties.
- 2.60 A great deal of faith has been invested in Ofcom by Parliament to protect and enhance public service television on a universal basis. Unless Ofcom is willing to proceed with diligence and with caution, there is a considerable risk that PSB plurality, already on a knife edge, could be lost forever.

## Section 3 – Audience demand and the case for a new ‘sixth’ public service network focused on local content

### LOCAL TV ON FREEVIEW IS THE MOST POPULAR NEW SPECTRUM APPLICATION IN ALL RESEARCH – SO WHY WON’T OFCOM SUPPORT ‘MUST CARRY’ STATUS?

#### LOCAL TV IS THE MOST DEMANDED NEW APPLICATION IN OFCOM’S DDR RESEARCH

3.1 In Ofcom’s recent DDR research, “*local TV on Freeview*” was the **number one** new application demanded by consumers, ahead of both “*extra SD channels*” and “*HD on Freeview*”.<sup>15</sup>

#### Importance to you personally of services that could use digital dividend spectrum<sup>16</sup>

Order of popularity	Application	Mean average score out of 10
1	Local TV on Freeview	6.3
2	Extra SD channels on Freeview	6.2
3	Better mobile phone coverage and mobile broadband	5.9
4	Wireless home networks	5.7
5	HD on Freeview	5.6
6	Mobile TV	3.3

3.2 It is noteworthy that HD is below local TV in all research ever conducted by Ofcom on the new applications which could access spectrum currently used by analogue television. In Ofcom’s ‘chip allocation’ exercise, designed to measure the societal value of a range of new applications and services, only 7 per cent of chips were allocated to HD, **less than 3 times the number of chips allocated to local TV on Freeview**.<sup>17</sup>

#### THERE IS NO CASE FOR INTERVENTION TO FACILITATE UNIVERSAL ACCESS TO HD BUT REFUSING TO ASSIGN CAPACITY TO LOCAL TV

3.3 It would reflect a serious failure by Ofcom if the two services that are least demanded by consumers (mobile TV and HD) become widely available post-DSO but the service most demanded by consumers (local TV on Freeview) fails to materialise.

3.4 There is no escaping the fact that a very high proportion of the UK population demand a local TV channel on Freeview. Ofcom’s failure to ever consult on allowing local TV access to the retained spectrum is irreconcilable with all evidence of demand in its possession. In light of Ofcom’s failure to give due consideration to the case for local TV on a universal multiplex, this submission sets out in detail many of the arguments Ofcom should be evaluating and consulting on.

<sup>15</sup> *Digital Dividend Review Market Research 2007 Executive Summary*, Ofcom, November 2007

<sup>16</sup> Q8.3a “For each of these services please score each on a scale of 0 to 10, where 10 means extremely important and 0 means not at all important to you personally” (mean scores are shown). Source: *Ipsos MORI survey 2007* Base: UK adults 1,049

<sup>17</sup> *Digital Dividend Review Market Research 2007 Executive Summary*, Ofcom, November 2007

## OFCOM'S DISMISSAL OF ITS OWN RESEARCH BEGGARS BELIEF

3.5 Ofcom states:

*"...the extent to which viewers will in fact choose to watch local television is not clear."*

3.6 The extent to which viewers will choose to watch local television has never been sensibly tested in any Ofcom research. It is therefore extraordinary for Ofcom to use this as an excuse for ignoring the results of its qualitative and quantitative research – which places local TV as either first or second in the applications most demanded by consumers.

3.7 The fact that some people may not want to watch local TV 24 hours a day is hardly a sensible justification for ignoring the demand for local TV on Freeview. **The same could be said of any TV channel anywhere.** There are some people who never watch 'national' 24 hour news channels – nobody suggests these channels should not exist. So why is Ofcom so opposed to local TV – the new channel most demanded by consumers in representative research?

## OFCOM IS IN DENIAL ABOUT THE DEMAND FOR LOCAL TV

3.8 Ofcom is in self-denial about the consumer demand for local TV on Freeview. No one would dispute that consumer research will always be open to interpretation. However, Ofcom cannot simply dismiss research results which show local TV is the most demanded application simply because it does not fit in with its predetermined plans. Ofcom's statements imply they would not wish to change policy even if 100 per cent of the population demanded a local TV channel.

## ADDRESSING MARKET FAILURE IN REGIONAL AND SUB-REGIONAL PRODUCTION

3.9 UK public policy recognises the importance of encouraging plurality in public service TV provision.

3.10 Ofcom is aware that public service content is not guaranteed to be universally delivered across all genres. For example:

- **UK Children's programming:** It is understood that Ofcom is starting to give serious consideration to the need for a new dedicated public service channel catering for the tastes and interests of children.<sup>18</sup>
- **Local programming:** It is the view of United for Local Television that a new network is required to serve the tastes and interests of viewers in the nations, regions and localities of the UK, particularly focused on local news and other local production such as arts and culture, social issues, debates and entertainment.
- **Communities of interest and other public service content:** There may be some other genres which are under-supplied by the market but which could be funded in the future direct by charitable organisations or public funds, including local authorities. This might include educational content, information on public services, current affairs or faith/ethnic programming. Teachers TV

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<sup>18</sup> Source: *The future of children's television programming*, Ofcom discussion paper, October 2007

and the Community Channel both fall into this broad 'public service' category, funded by the Government.<sup>19</sup>

- 3.11 This submission suggests a new 'sixth' public service network is established with a specific remit to address the proven and demonstrable market failure in local programming provision. This 'sixth' channel may also carry networked public service content on a region/nation or UK basis.
- 3.12 "Channel 6" would be radically different in structure from any of the incumbent PSB operators. Channel 6 would not consist of one channel, but of 50+ local channels, all based in the sub-regions of the UK. Each would commission its own local and regional content. No longer would production contracts be determined by a handful of network centres, based in London. "Channel 6" would have a clear remit to boost opportunities to participate in the creative industries throughout all corners of the UK.

### **WHAT IS CHANNEL 6 AND WHY DO WE NEED IT?**

- 3.13 This submission makes reference to "Channel 6" as a new category of broadcast licence. It is not necessarily suggested any new channel be branded to viewers as Channel 6, or even appear at 'number 6' on any electronic programme guide (although this would be advantageous in marketing terms and significantly revenue-enhancing).<sup>20</sup> This submission uses the term "Channel 6" simply to follow on from the Channel 3, 4 and 5 licences as defined in the CA03.
- 3.14 Every part of the UK would have a different Channel 6, separately licensed, as set out in section 4 of this submission. The main characteristics of the proposed new free-to-air service are that it would be:
- an explicit public service channel, with a core commitment to local news and current affairs;
  - promote local production and participation, supporting voluntary organisations and providing airtime to community media; and
  - enhance TV advertising opportunities for local businesses.
- 3.15 The Secretary of State could also impose other public service conditions on Channel 6 licensees. For instance to:
- provide airtime to a new children's PSB service;
  - broadcast Public Service Publisher funded content or indeed other content already supported by public funds (e.g. Teachers TV & Community Channel);
  - support the promotion of skills, training and employment opportunities;
  - promote citizen engagement and public access;

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<sup>19</sup> Although a specialist service, Teachers TV provides one model of how contestable funding could support new UK-wide public service channels catering such as a new "Children's PSB" network. Teachers TV is operated by Education Digital Management Limited, an independent media consortium, which was awarded the contract to run the channel in 2004 following a tender process by the Department for Children, Schools and Families (formerly DfES). An independent Board of Governors oversees the performance management of the channel to ensure it delivers value for money and meets audience needs. The channel supplements Government funding with commercial advertising.

<sup>20</sup> "The EPG is like the real estate market – location is everything. As a result big name broadcasters will jostle for the best possible positions high up on the first pages of the EPG. At present, top slots on the entertainment page are worth tens of millions of pounds and...prices are set to arise." Ed Hall, Chairman, Canis Media Group discussing the Sky EPG market in *Broadcast*, 11 January 2008

- provide dedicated programming for the UK's nations and Government Office Regions of England.
- 3.16 Channel 6 could become a guaranteed provider of public service content at a time when this content faces a highly uncertain future on the traditional 'PSB' outlets.

### **OPTIONS FOR PUBLIC POLICY INTERVENTION**

- 3.17 There is clear evidence the market has failed to deliver local TV to any significant degree on any platform and is likely to continue to do so, for the foreseeable future, without public policy intervention. The crucial question for policy makers is what degree of intervention, if any, is justifiable and appropriate to adequately remedy this high risk of continuing market failure.

### **LOCAL TV IN MOST COUNTRIES EMERGED FROM "MUST CARRY" OBLIGATIONS**

- 3.18 Outside the UK, local TV channels exist in almost every other country in the democratic world. Ofcom's own analysis suggests local TV would be commercially viable in the UK if access to DTT capacity could be secured at the main DTT sites. However, the UK lacks an effective competitive market in any DTT multiplex capacity and, especially, universal multiplex capacity.
- 3.19 In most countries, including the US, local TV emerged as a result of "*must carry*" obligations (or similar regulatory intervention) enforced by local or national government. Similarly in the UK, there is a strong chance that the capacity that could be used to supply local TV on a UK-wide basis would never become available without regulatory intervention.

### **OFCOM IS THE ONLY PUBLIC BODY WITH THE RESOURCES, EXPERTISE OR STATUTORY DUTY TO DEVELOP A NEW TIER OF LOCAL TV**

- 3.20 The only practical method to address the failure of the market to deliver local TV in the UK is to assign DTT multiplex capacity to local TV services. An alternative proposal which has been suggested by Ofcom is the provision of direct funding to assist local channel providers in gaining access to DTT multiplex capacity.
- 3.21 Ofcom's proposals for direct funding contain a number of obvious flaws, not least the lack of any effective functioning market for DTT multiplex capacity (especially universal multiplex capacity). Public funding bodies could well require a local TV channel to be universally available to citizens on a free-to-air platform (e.g. on a universal multiplex) to justify the use of public funds.
- 3.22 No statutory body in the UK has a duty to protect and enhance public service television plurality across the UK with the sole exception of Ofcom. It is conceivable that direct funding could compromise the editorial independence of local TV and lead to programming that is unattractive to the audience, potentially to the detriment of all parties – the direct funding body, the local TV channel and the citizen.<sup>21</sup>

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<sup>21</sup> There is currently no framework in place for any public bodies to support local TV in the vast majority of the UK and, even if such arrangements could be established, the implementation of such procedures could take many years. Further, for public bodies to seek to implement and enforce service agreements with local TV contractors would require them to take on quasi-Ofcom regulatory functions – an area in which they may have no core competence. Ofcom is the most obvious statutory body with the remit and resources to (i) assess the costs and benefits of market intervention; (ii) identify suitable channel providers; (iii) put in place appropriate licence conditions; (iv) monitor the satisfactory performance of services and (v) implement appropriate enforcement measures where required.

- 3.23 Ultimately, it would appear perverse for the state to ‘buy back’ multiplex capacity (at a spectacular premium) which it had previously assigned to a multiplex operator.<sup>22</sup>

#### **LOCAL TV CAN WORK CLOSELY WITH LOCAL AUTHORITIES AND PUBLIC BODIES**

- 3.24 It is often suggested that local TV channels could work very closely with local authorities and other public bodies, helping to disseminate information on local public services. Funding for specific projects (e.g. advertising or sponsored programming) may well become the norm. The law does permit local authorities outside Scotland to invest in television channels and, in spite of difficulties, it is conceivable some partnerships would flourish.
- 3.25 Ultimately it is not the primary duty of local authorities to protect and enhance public service broadcasting across the UK. This is a duty Parliament has conferred upon Ofcom and which Ofcom is alone in having the resources, experience and expertise to execute.

#### **STATE AID CONSIDERATIONS**

- 3.26 The European Commission has recently decided that German plans to finance part of the fees commercial broadcasters pay for the transmission of their programmes on the DTT network in the German Land of North Rhine-Westphalia are not compatible with the European Union’s rules relating to state aid. In light of this decision, there would appear to be a risk that Ofcom’s proposal for direct funding of DTT transmission costs for local TV operators, quite apart from being impractical, may also be illegal.
- 3.27 In contrast, the granting of multiplex capacity is an established, practical and effective mechanism for achieving the fundamental objective of DTT carriage for the achievement of public purposes.

#### **OFCOM HAS YET TO PRODUCE ANY COMPELLING EVIDENCE THAT EXISTING UNIVERSAL MULTIPLEX CAPACITY IS BEING USED PROPERLY TO ACHIEVE PUBLIC PURPOSES**

- 3.28 It is notable Ofcom has conducted no public service audit of how the PSB operators use their existing multiplex capacity outside of their core PSB services. It is a dereliction of Ofcom’s duties to intervene in the market but not to continuously monitor and review the results of such intervention, ensuring it is meeting ongoing public service objectives.
- 3.29 For Ofcom and Government to discriminate in favour of explicitly commercial services and against local content would reflect all of the characteristics of the worst type of intervention – being discriminatory, untargeted, ill considered and anti-competitive. Such a proposal represents a fundamental breakdown in the implementation of public policy intervention as intended by Parliament when framing the BA96 and CA03.

#### **THERE IS NO FUNCTIONING COMPETITIVE MARKET IN DTT MULTIPLEX CAPACITY**

- 3.30 NGW currently has a 100 per cent monopoly in being the only DTT multiplex provider not vertically integrated with an incumbent PSB operator. The DTT platform is capacity constrained by its technical characteristics. However, this is severely exasperated by

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<sup>22</sup> Direct subsidies to acquire land-based resources such as spectrum have a history of inflating the prices of these resources, distorting the market. Ricardo’s law of economic rent suggests the price of land as a factor of production will inflate to take account of subsidies available. *Principles of Political Economy and Taxation*, David Ricardo, first edition published 1817, suggests subsidies can be expected to result in a surplus profit for a landlord (a multiplex operator) rather than being passed on to benefit tenants (service providers), and suggests why such incentives may therefore prove ineffective.

incumbent broadcasters flooding the platform with their own services in order to protect their market share, thereby shutting out new entrants.

- 3.31 Further, there is no guarantee that DDR spectrum will enhance the market for DTT multiplex capacity, for the reasons discussed in section 4.
- 3.32 The analogue PSB operators do not have a divine right to dominate the DTT platform. This is a privilege at risk of being abused with repeats, reality series and/or exploitative premium rate promotions. It would be wrong for Ofcom and Government to 'gift' universal multiplex capacity to the 'heritage' analogue channels without also considering possible alternative public service uses.

### **THE OPPORTUNITY COST OF ASSIGNING DTT CAPACITY TO INCUMBENT PSB OPERATORS IS IMMENSE**

- 3.33 If all universal multiplex capacity is assigned to incumbent PSB operators it is highly unlikely that it will be possible for new rival providers to gain access to this capacity. Incumbent broadcasters have a commercial desire to protect their own market share and cannot be expected to use their gifted spectrum assignments to encourage new market entrants.
- 3.34 It is difficult to envisage circumstances in which any of the incumbent PSB operators would voluntarily surrender multiplex capacity gifted to them. It is therefore evident that the market for universal multiplex capacity is not one in which supply can readily be increased to meet evidence of demand. Once all universal multiplex capacity is used, there is unlikely to be a functioning market in which new channels are able to acquire capacity.
- 3.35 Capacity that is gifted to incumbent operators, is in practice lost to all other uses. The opportunity cost of any such assignment is therefore extremely high.

### **THE PURPOSE OF A UNIVERSAL MULTIPLEX IS TO MEET PUBLIC POLICY OBJECTIVES**

- 3.36 Research suggests that "local TV on Freeview" is the most demanded new application in the UHF spectrum. If Ofcom or Government wished to launch a sixth public service video stream at a future date, would it be possible to acquire universal multiplex capacity in the open market?
- 3.37 The services using the three universal multiplexes would be able to hold the Government to ransom should there be any desire, in the future, to develop a sixth public service network. The lack of supply would ensure any capacity that could be prised from the incumbents in the (non)market would command a spectacular premium. It would be perverse to use any public funds to 'buy back' multiplex capacity that had been rashly gifted by the regulator for use by channels with little or no public service obligations.
- 3.38 The only appropriate and effective action, should Ofcom and the Government wish to introduce a new public service network on a universal basis, is to assign DTT capacity for this purpose on a universal multiplex. Neither Ofcom or Government can possibly be expected to reach a conclusion on such a policy, unless and until thorough research and analysis has been published and consulted upon.

### **A SOUTHERN BIAS IS PREVAILANT ON EXISTING PSB SERVICES**

- 3.39 The single most popular news slot on UK television is not any UK-wide news programme but the 6.30pm 'regionalised' news on BBC1. This reflects the extent to which the UK's nations and regions do not necessarily relate to UK-wide news programming.

- 3.40 That Scotland, Wales and Northern Ireland should have their own devolved administrations – but no dedicated ‘national’ TV channels in the English language – makes little sense to many observers. Viewers have an expectation to see their own parliament/assembly represented on the news, to find local debate in prime time, to have their own current affairs and cultural programmes – and not to find, as they do now, programmes driven by a southern agenda acknowledging the English legal or educational systems.<sup>23</sup>
- 3.41 For the first time, the English-centric Channel 4 and Channel 5 services will achieve universal terrestrial coverage in the UK at DSO. There is a pressing need for new English language services in the nations and regions to compensate for the metropolitan and ‘southern’ bias prevalent on all of the English-based PSB networks.
- 3.42 Channel 6 would enhance the provision of public service content produced outside of the south of England serving interests such as ethnic programming, faith programming, agriculture, fisheries, Celtic programming, community regeneration, Objective One status regions – not just on a local level, but also nation and pan-UK.

### **THE SCOTTISH BROADCASTING COMMISSION**

- 3.43 In August 2007 the Scottish Broadcasting Commission was appointed by Scotland's First Minister, Alex Salmond MSP. The Commission will consider the widely perceived under-representation of Scottish programming on the current television services broadcasting in Scotland. The Commission's “interim report on economic phase” was published in January 2008 and set out some of the challenges facing the Scottish production industry.
- 3.44 United for Local Television was principally formed to advocate local TV. However, it is notable that under Ofcom's proposals there would be no capacity available on any universal DTT multiplex for a new Scottish channel even if the Scottish Government were ultimately to advocate such a service. This could severely undermine the prospects of any dedicated new channel for Scotland.
- 3.45 At the very least, delaying any re-organisation of the DTT platform would allow greater opportunity for all of the nations and regions of the UK to input into the debate about the future of national, regional and sub-regional broadcasting which is already underway in Scotland.

### **OFCOM HAS BEEN ASKED TO ENGAGE THE NATIONS AND REGIONS IN DEBATE BEFORE TAKING IRRECOVABLE DECISIONS ON THE USE OF UNIVERSAL MULTIPLEX CAPACITY**

- 3.46 Last year, Lord Sandy Bruce-Lockhart, Chairman of the Local Government Association wrote to Lord Currie, Chairman of Ofcom:<sup>24</sup>

*“Television is still the greatest source of information flow. I believe that it is essential for television to have a stronger element of regional and particularly local news and programmes. Local means areas of governance such as cities and shires.... The changes in Government policy and in the Local Government Bill are very much about emphasising the importance of ‘place’, the fostering of a*

<sup>23</sup> The quotas for production outside London are currently set at 30 per cent. of BBC and Channel 4 productions, 50 per cent. for ITV1, and 10 per cent. for Five (source: *Review of the television production sector*, Ofcom, January 2006). However, many production companies complain the commissioning process remains London-based and therefore fails to fully appreciate the tastes and interests of the nations and regions. In 2006, 179.6 hours of television were made in Scotland compared to 102.7 in 2004 - a loss of 76.9 hours or about £11m. Wales lost 11.3 hours on its annual total in the same period while production out of Northern Ireland increased slightly from 7.5 to 11.2. Source: *The Production Trend Report for Out of London*, PACT, January 2008

<sup>24</sup> 12/06/07

*sense of local identity and belonging. But they are also about, needing to hold local decision makers to account locally, through local Select Committees, local council leaders, and those that head up the NHS, Police and other local public institutions. Again this requires public awareness to create interest. Each of these challenges would be greatly advanced by local television.”*

- 3.47 On 19th September 2006 Alex Neil MSP, Chair of the Culture and Enterprise Committee of the Scottish Parliament, also wrote to Lord Currie:

*“I am writing to you to request that no decisions are made on the use of broadcast spectrum that exclude the introduction of Local TV channels with DTT roll out to reach all households in Scotland. Furthermore, spectrum should not be allocated or regulated so as to restrict or inhibit the introduction in future of new independent public channels from and for Scotland.”*

- 3.48 It would be wrong for Ofcom to dismiss appeals to consider the interests of the nations and regions of the UK without even the courtesy of conducting any analysis of the options.

### **PLACING THE CITIZEN AT THE HEART OF POLICY DEBATE**

- 3.49 The strength of enthusiasm for and engagement with the democratic process is vital to sustaining a healthy representative democracy.
- 3.50 UK voter turnout in General Elections has fallen 17 points in a decade, from 78 per cent in 1992 to 61 per cent in 2005. The overall turnout figure masks wide variation in participation rates according to ethnicity, occupational class, income, educational attainment and age. In the 2005 election, youth turnout was 37 per cent – half that of older age groups.<sup>25</sup>
- 3.51 Policy makers have a stark choice when facing these facts. Consign local TV to the internet. Accept that only the most educated will read local newspapers and engage in local democracy. Or take positive action. Accept that television continues to enjoy the greatest power in influencing minds whatever the age, class or background. Use local television to empower citizens and place them at the heart of policy debate.

### **OFCOM HAS A DUTY TO ACT WITH PRUDENCE**

- 3.52 United for Local Television sympathises with Ofcom’s desire to minimise regulatory intervention. However, Ofcom is now proposing a radical new intervention. Instead of revoking any of the existing DTT multiplex licenses and re-awarding the spectrum using market mechanisms (as it has the right to do to secure optimal spectrum usage) Ofcom has decided to take an interventionist approach to the management of the retained spectrum.
- 3.53 Ofcom proposes to use ‘command and control’ to reorganise the DTT platform in order to seek to meet public policy objectives. It would be inconsistent with Ofcom’s proposed interventionist approach to this spectrum if it were to ‘gift’ capacity to incumbent operators with little or no public service obligations leaving no capacity available for new public service entrants.
- 3.54 Citizens are entitled to expect public policy intervention to ensure that at least a proportion of DTT multiplex capacity is used to provide services that benefit the public and public policy objectives – not just those services which are most financially rewarding to their shareholders.

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<sup>25</sup> Source: *Election 2005: turnout – how many, who and why?*, The Electoral Commission, October 2005

**GOVERNMENT POLICY IS TO REQUIRE OFCOM TO INTERVENE IN THE ALLOCATION AND ASSIGNMENT OF SPECTRUM TO ACHIEVE BROADCAST POLICY OBJECTIVES**

- 3.55 It is UK Government policy to intervene in the allocation and assignment of spectrum for broadcasting. This is witnessed by the Government's decision to allocate around 70 per cent of analogue TV spectrum to the six DTT multiplexes.
- 3.56 Nowhere, in the whole of the CA03, does Parliament allow spectrum to be assigned purely by the market. On the contrary, Parliament clearly sets out expectations that Ofcom will intervene to exercise regulatory control and ensure broadcast policy objectives are achieved.
- 3.57 Television is the principal medium for the dissemination of mainstream local news content throughout the democratic world. To fail to reserve spectrum for a sixth public service network now, ahead of Ofcom's PSB review, would appear highly imprudent, rash and exposed to a high risk of regulatory failure.

## **Section 4 – Market failure & opportunity cost examined**

### **MARKET FAILURE AND THE OPPORTUNITY COST OF RESERVING CAPACITY FOR A SIXTH PSB NETWORK – WHY OFCOM’S EXISTING ANALYSIS IS NOT FIT FOR PURPOSE.**

#### **OFCOM HAS CONSISTENTLY FAILED TO ADDRESS THE ‘CROWDING OUT’ ARGUMENT PRESENTED BY THE LOCAL TV SECTOR**

- 4.1 In its DDR statement, Ofcom considers three potential causes of market failure in relation to local TV:<sup>26</sup>
- (i) coordination failure and transaction costs;
  - (ii) broader social value;
  - (iii) advertiser funded business model.
- 4.2 Surprisingly, it would appear that Ofcom has largely ignored the most obvious cause of market failure facing local TV:
- (iv) being crowded out of multiplex capacity by UK-wide channels.
- 4.3 The cost of producing a single local TV channel is relatively modest. However, aggregated on a UK-wide basis, the cost of producing a network of 50+ local TV channels is far higher than the cost of producing one single UK-wide programme service.
- 4.4 In the absence of regulation, local programmes risk being ‘crowded out’ by ‘national’ programmes which are cheaper to produce, even though they may not be as popular with the audience. Ofcom’s own analysis suggests the local TV business model is profitable – but still more marginal than many ‘national’ channel business models. Therefore, in a pure cash auction, a ‘national’ channel is most likely to out-bid a local channel for access to multiplex capacity.

#### **IT IS ENTIRELY BECAUSE OF THE RISK LOCAL CONTENT WILL BE “CROWDED OUT” THAT OFCOM INTERVENES IN THE LOCAL RADIO SECTOR**

- 4.5 It is entirely because of the concern that networked programming would ‘crowd out’ local programming that Ofcom regulates localness in radio, including on local DAB digital multiplexes.<sup>27</sup>
- 4.6 Ofcom is aware that the vast majority of news is consumed via television. Ofcom surveys shows that, when asked which source of news is used most often, radio comes third at 11 per cent, a long way behind television at 65 per cent and also behind newspapers at 14 per cent.<sup>28</sup>

<sup>26</sup> *Digital Dividend Review – A statement on our approach to awarding the digital dividend*, Ofcom, December 2007

<sup>27</sup> Ofcom has a duty to use its discretion to protect localness in radio but only to the extent it considers appropriate. Ofcom’s November 2007 policy statement ‘*The Future of Radio*’ concluded: “we believe the regulation...of localness is still required.”

<sup>28</sup> *New News, Future News*, Ofcom, June 2007

- 4.7 Localness on television is of much greater importance to citizens than localness on radio. That is why Ofcom has special duties to protect and enhance “*public service television*” – a duty which does not apply to radio.

#### **OFCOM’S POLICY TO LOCAL BROADCASTING IS INCONSISTENT**

- 4.8 Ironically, Ofcom uses the lack of local TV in the UK as justification to regulate localness on radio.<sup>29</sup>

- 4.9 Ofcom states:

*“Radio allows for the expression of local viewpoints in a way that reaches far more people than a local website does and with a far greater level of access to express different viewpoints than the hour or so a day of regional television, which covers bigger areas and rarely engages viewers directly in debate. As such, access to the airwaves is important and it is in the public interest for there to be a plurality of such access to ensure that different viewpoints can be heard.”*<sup>30</sup>

- 4.10 As Ofcom knows, there is scant discussion and debate on most local radio stations, which are primarily music led. By regulating localness on radio, but not television, Ofcom’s broadcasting policy is inconsistent and out of touch with the public’s demand for extended local news and debate.

#### **THERE IS NO OBJECTIVE REASON FOR OFCOM TO INTERVENE TO PROTECT LOCALNESS IN RADIO BUT NOT TV**

- 4.11 The notion that public policy intervention is fundamental to protect and enhance local content in the commercial radio sector, but not in the TV sector, does not stand up to objective scrutiny. It is reasonable to expect local TV channels to provide significantly greater local news, current affairs and discussion content than a typical music-led commercial radio service. In contrast to music radio, it is reasonable to expect that most viewers will generally turn to local TV services for local news and other local content.

- 4.12 It is entirely clear that, in framing the Communications Act 2003, Parliament expects Ofcom to intervene to protect and enhance the content most demanded by consumers. There is no logic or reason for Ofcom to regulate localness in radio, but to fail to regulate localness on TV.

#### **COORDINATION FAILURE AND TRANSACTION COSTS ARE NOT RESOLVED BY OFCOM’S PROPOSAL TO AUCTION INTERLEAVED SPECTRUM IN GEOGRAPHIC LOTS**

- 4.13 Ofcom has decided to auction one or two frequency channels in the interleaved spectrum at “*about 25*” DTT station sites.<sup>31</sup> By far the most likely outcome of this auction will be that a ‘national’ channel provider, or network operator, acquires the vast majority of assignments and aggregates them to form a new multiplex.

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<sup>29</sup> For example, Ofcom states: “*The public policy we have followed in the UK has ensured that almost every part of the UK has at least one commercial local station.... providing local news and ensuring a plurality of local voices alongside the BBC. Given that television in the UK has never been local and that even regional commercial television has been in retreat in recent years, local commercial radio has provided the only source of broadcast local news and information as an alternative to the BBC.*” Source: *The Future of Radio – The future of FM and AM service and the alignment of analogue and digital regulation*, discussion document, Ofcom, November 2006

<sup>30</sup> *The Future of Radio The future of FM and AM services and the alignment of analogue and digital regulation (consultation)*, Ofcom, April 2007

<sup>31</sup> *Digital Dividend Review – A statement on our approach to awarding the digital dividend*, Ofcom, December 2007

- 4.14 Once a 'seventh' multiplex is created in the interleaved spectrum, the likelihood of coordination failure which Ofcom notes is a high risk for local TV operators will immediately occur. Multiplex operators are reluctant to 'split up' video streams into 'local' assignments on the basis that it devalues the remainder of the capacity. Local TV operators are no more likely to be able to coordinate access to any 'seventh' UK multiplex, than they are currently able to secure access to the existing six Freeview multiplexes.
- 4.15 It can therefore be seen that Ofcom's DDR proposals do not address **any** of the substantive causes of market failure faced by the local TV sector in the UK.

#### **LOCAL TV CANNOT ACCEPT MULTIPLEX CAPACITY ON A LEVEL PLAYING FIELD WITH 'NATIONAL' TV**

- 4.16 In its DDR statement, Ofcom argues that where 'Private Value' and 'Broader Social Value' are broadly similar in their values, then the likelihood of market failure is small.<sup>32</sup> This is true where all competing users of spectrum are operating on a level playing field and have a similar ability to generate profits. However, the business model for local TV is so radically different from the business model for a UK-wide service that it cannot possibly be argued that there is a level playing field to access multiplex capacity.
- 4.17 A UK-wide TV channel has the costs of programming, premises and personnel only once. A local TV network has all of these costs multiplied by every channel within the network. Local TV will generate new employment and production opportunities throughout the UK – but cannot reasonably be expected to be a profit maximising user of multiplex capacity.
- 4.18 There is no obvious model that enables a local TV channel to out-bid a 'national' TV channel for capacity at a DTT main station, without regulatory intervention. In over two years of research and analysis, Ofcom has offered no sensible suggestion to enable local TV services to gain access to multiplex capacity, in competition with more profitable UK channels.<sup>33</sup>

#### **THE SUPPLY OF MULTIPLEX CAPACITY IS HIGHLY INELASTIC**

- 4.19 In a competitive market economy, supply can normally be expected to increase in response to demand. However, multiplex capacity is (and will likely remain) highly inelastic – it is a scarce resource in relatively fixed supply.

#### **ADVERTORIAL CHANNELS ARE ALREADY 'CROWDING OUT' EDITORIAL CHANNELS FROM INDEPENDENT OPERATORS ON COMMERCIAL MULTIPLEXES**

- 4.20 If you exclude Sky and Virgin Media, both of whom operate their own TV distribution platforms, there are only four free-to-air peak time channels on the entire Freeview platform not owned by PSB operators (QVC, Ideal World, Nuts TV and TMF). Three out of four of these services are ultimately operated by major US networks – reflecting the lack of an effective functioning market for 'Freeview' multiplex capacity for new UK-based public service networks.

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<sup>32</sup> *Digital Dividend Review – A statement on our approach to awarding the digital dividend*, Ofcom, December 2007

<sup>33</sup> Whilst local TV can be expected to be profit-generating, there is reason to believe these profit margins will still be lower than can typically be generated by many UK-wide business models and therefore, where capacity is scarce, will be out-bid for access. All else being equal, a single TV channel split into two (say 'UK North' and 'UK South') would possess double the costs of one single UK-wide channel but with only half the revenue. In practice, local TV channels implement strategies to minimise cost and maximise sales. In particular, local content can be expected to attract much higher audience levels than 'national' content. However, this still does not generate a 'level playing field' in light of the in-built advantages attached to UK-wide channels.

- 4.21 Shopping channels supply advertising 24/7 and do not have to comply with the requirement to separate their editorial from advertising content. This business model is highly lucrative – low cost studio based programmes supply constant advertising with no need to produce objective news or other quality programming.
- 4.22 There are four main shopping channels on the 'Freeview' platform (this ignores other teleshopping outside of peak times). Ideal Shopping has reportedly extended its contract until 2018 and QVC until 2022.

#### **IT CAN BE ASSUMED FURTHER SHOPPING CHANNELS ARE WAITING TO ACQUIRE MULTIPLEX CAPACITY**

- 4.23 Ideal Shopping Direct Plc stated in its September 2007 interim report that “*over 40% of our business originates from customers using Freeview*”. This demonstrates the value of the DTT platform to direct shopping business models. This demand is hardly likely to subside as around 80 per cent of all new digital households are choosing DTT over other digital platforms.
- 4.24 It can be assumed QVC, Idea World and other shopping channel operators will all be interested in acquiring new incremental DTT capacity that becomes available – at premium rates – for the lucrative shopping channel business model. This will even further undermine the market for DTT capacity amongst services operating the less lucrative editorial-based programming model in which advertising minutage is regulated by EU directive.<sup>34</sup>
- 4.25 Four out of six of the existing DTT multiplexes are operated by 'vertically integrated' broadcasters. If this pattern were to continue with any new DTT multiplexes in the DDR spectrum then there is a strong prospect that a network of shopping channels could own their own rival multiplexes, shutting out all new entrants. It is currently impossible for Ofcom to conclude that its current policy of releasing spectrum on an application and technology neutral basis will significantly enhance the market for DTT multiplex capacity for new entrants offering public service content.

#### **OFCOM'S POSITION IS UNTENABLE**

- 4.26 It is Ofcom's stated position that if a UK-wide TV channel bids £1 more for multiplex capacity than a network of 50+ local TV operators then there should be no local TV on Freeview. Yet a UK-wide TV channel has far lower costs than a network of 50+ local operators.
- 4.27 It is neither sensible or reasonable for Ofcom to expect a local TV network to out-bid a single UK-wide channel for access to multiplex capacity. In light of Ofcom's statutory duties, Ofcom's stated position appears untenable.

#### **OFCOM'S ASSESSMENT OF THE “OPPORTUNITY COST” OF LOCAL TV IS NOT FIT FOR PURPOSE**

- 4.28 The potential 'opportunity cost' of reserving spectrum for local TV was valued by Ofcom as part of its Digital Dividend Review.
- 4.29 Ofcom states:

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<sup>34</sup> It is rumoured that commercial multiplex owners are concerned to avoid the platform being dominated by shopping channels pre-DSO and have taken action to seek to ensure there remain editorial services at a time when consumers are choosing which platform to adopt. In the longer term it may be difficult to sustain this position. It would be reasonable to expect many shopping channel operators to be excited about the opportunity to acquire interleaved or even cleared spectrum direct from Ofcom at auction with no content conditions attached.

*“...there is insufficient evidence to suggest that intervention in the DDR award is justified. ...The relatively significant opportunity costs of such an intervention, at around £400m, lend weight to this assessment...”<sup>35</sup>*

- 4.30 Ofcom seeks to argue that reserving just **1** interleaved frequency for local TV would have an opportunity cost higher than reserving **20** interleaved frequencies for PMSE across the UK. Elementary maths suggests this calculation must be wrong. It is notable that many of the frequencies proposed to be assigned to a Band Manager (primarily for the protection of PMSE) could be suitable for new commercial DTT multiplexes, albeit generally targeting wideband aerials.
- 4.31 Ofcom estimates that reserving a frequency channel for local TV in the interleaved spectrum, across the whole of the UK, would generate an opportunity cost of somewhere between £30m and £400m over 20 years.<sup>36</sup> Clearly, there is a significant difference in value between £30m and £400m suggesting a wide margin of error is built into Ofcom's calculations. Such a wide margin makes the analysis bordering on meaningless. Even so, the calculation is, itself, irrefutably flawed.

#### **VALUING THE OPPORTUNITY COST OF LOCAL TV**

- 4.32 In estimating opportunity cost, Ofcom has assumed that an entire 8 MHz channel would be used for local TV at 25 of the larger DTT sites.
- 4.33 Few advocates of local TV would demand the whole of one 8 MHz channel be solely reserved for local use. One 8 MHz channel can provide a DVB-T multiplex with up to ten SD video streams, or a mixture of video, audio and data.<sup>37</sup> For Ofcom to assume the whole of a new DTT multiplex is assigned to local TV therefore represents a grotesque distortion of the real opportunity cost.

#### **THE TRUE OPPORTUNITY COST OF RESERVING A SINGLE VIDEO STREAM FOR LOCAL TV**

- 4.34 Based on Ofcom's own calculation, a realistic assessment of the opportunity cost of reserving capacity for local TV would be as follows:
- If only one of the ten potential video streams in an 8 MHz channel were reserved for local TV, the opportunity cost of any intervention would be just one-tenth of Ofcom's estimate of between £30m and £400m (i.e. between £3m and 40m over 20 years).
  - If a local TV licence is for a term of 15 years, rather than 20, then this would further reduce the opportunity cost by a quarter (i.e. the new figure would be between £2.25m and £30m).
  - Ofcom would appear to be basing its assessment on the most viable DTT services. Economic theory suggests that the channel that would be 'displaced'

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<sup>35</sup> Source: *Digital Dividend Review – A statement on our approach to awarding the digital dividend*, Ofcom, December 2007

<sup>36</sup> Ibid

<sup>37</sup> The restrictions imposed by Ofcom on these geographical interleaved packages in effect restrict their commercial use to DTT – the application which came both first and second in Ofcom's DDR research. In theory, a multiplex can also be used to provide DVB-H (for mobile TV) but the power levels available in the interleaved channels will generally be inadequate for reception on hand-held portable devices. There are far more suitable frequencies for DVB-H than the 'in group' frequencies which, by wide consensus, are considered most suitable for reception of DTT by existing roof-top aerials. However, Ofcom has proposed parts of the interleaved spectrum will be released in a packages that could enable a range of new uses. This would comprise channels 61 and 62 adjacent to the upper cleared spectrum, in line with the non-mandatory harmonisation which Ofcom is recommending to Task Group 4 (TG4) within CEPT.

by local TV would be the most marginal service on the DTT platform, not the most viable.

- Based on the prudent assumption that the most marginal service will have at least half the total value of the most viable service, then the opportunity cost of providing local TV is likely to be no more than half of £30m (i.e. £15m over 15 years or £1m per annum).
- The modest opportunity cost of £1m per annum compares to the far higher **£50-100m per annum** of direct funding Ofcom has suggested for a 'Public Service Publisher' to subsidise the market for web applications.<sup>38</sup>

4.35 Repeatedly, Ofcom relies upon the erroneous cost of £400m in its DDR statement to support its argument that intervention to reserve capacity for local TV is not justified. The only reasonable conclusion is that Ofcom has made a material error in its calculations. It is vital Ofcom correct this error in order to accurately assess the costs and benefits of granting capacity for Channel 6 as a 'sixth' public service network on an existing universal multiplex.

#### **THE MARKET WILL DELIVER THE MOST VIABLE DTT AND OTHER DIGITAL DIVIDEND SERVICES**

4.36 The suggestion that reserving capacity for local TV will have a material impact on the market's ability to deliver other valuable applications is demonstrably false. There are already over 30 channels on the commercial DTT platform, with capacity for more post-DSO as a result of a mode change by four of the six multiplexes in the retained spectrum. There will also be a plethora of opportunities for additional DTT, mobile broadband and other valuable applications to access the 'digital dividend' spectrum.

#### **THE FUNDAMENTAL QUESTION FACING DTT POLICY MAKERS**

4.37 The most important question facing Ofcom, in relation to DTT, is the opportunity cost of gifting all universal multiplex capacity to incumbent PSB operators without reserving a single video stream for a new entrant to enhance the plurality of broadcasting voices in the UK.

4.38 There is no free or open market in universal multiplex capacity. Opening up the universal DTT platform to a new entrant with a remit to commission new programming from all parts of the UK (shown alongside other public service content from around the world) would make a material positive impact on the social and economic development of local communities. It would also significantly enhance the diversity of opinions and voices available universally in the UK.

4.39 The opportunity cost of reserving capacity for Channel 6 is a moderate, targeted and proportionate response to the high risk of market failure should Ofcom fail to reserve any capacity for local broadcasters on a universal multiplex.

#### **AT LEAST 1 CHANNEL OUT OF 30 CHANNELS ON THE FREEVIEW PLATFORM SHOULD BE RESERVED AS A LOCAL CHANNEL FOR LOCAL BROADCASTING**

4.40 Channel 6 would represent only 1 of at least 30+ channels on the current DTT platform (and an even lower proportion as the platform continues to grow). The market will therefore have significant opportunities to deliver the wide range of TV and data services demanded

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<sup>38</sup> Source: *A new approach to public service content in the digital media age – The potential role of the Public Service Publisher*, Ofcom, January 2007

by consumers, including shopping channels, premium rate service channels and semi-naked female channels, on services that are mostly free of any positive programming obligations from Ofcom.

- 4.41 This will act to even further minimise the opportunity cost of intervention to support Channel 6, whilst remaining consistent with Ofcom's regulatory principle which commits it to:

*"...intervene where there is a specific statutory duty to work towards a public policy goal which markets alone cannot achieve."*<sup>39</sup>

#### **IF THIS IS NOT MARKET FAILURE, WHAT IS?**

- 4.42 It is obvious to almost every government in the democratic world that if you fail to reserve capacity on the major TV platforms for local broadcasting then local operators risk being crowded out by 'national' operators. It is extraordinary that Ofcom appears to be unable to grasp such a simple concept.
- 4.43 The UK has one of the highest digital TV penetrations in the democratic world but is also one of the least well served for local TV provision. If this is not demonstrable evidence of market failure, what is?<sup>40</sup>

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<sup>39</sup> *Ofcom's Regulatory Principles*, Ofcom

<sup>40</sup> The UK also has the most active online population in Europe, with the highest average number of daily visitors (21.8m), the highest usage days per month (21 per user), and the highest average time spent per month per user (34.4 hours). Source: *comScore via E-consultancy blog*, June 2007

## **Section 5 – The business case: DTT v internet**

### **WHY DTT IS “CORE” TO THE LOCAL TV BUSINESS MODEL AND WHY THE INTERNET IS NOT A SUITABLE SUBSTITUTE PLATFORM**

- 5.1 It has been suggested by Ofcom that the internet could be a more suitable platform for local TV than DTT. No business model has ever been produced to support this analysis.

#### **TV IS ‘FIRST CHOICE’ PLATFORM FOR DISPLAY ADVERTISING**

- 5.2 Television is often regarded as the most powerful medium in the world and as the ‘first choice’ for advertisers seeking to build brand awareness.
- 5.3 The local TV business model relies, to a significant extent, on local advertising.<sup>41</sup> This is because ‘national’ advertisers already have cost-effective access to a number of established ‘UK-wide’ TV services. In contrast, small-to-medium sized local businesses, operating independently from ‘national’ chains, do not currently have access to a choice of TV advertising opportunities. It is not generally cost-effective for a local business, targeting consumers within a 25 mile radius, to advertise on any existing digital TV channel.

#### **ALMOST EVERY COUNTRY IN THE DEMONCRATIC WORLD INTERVENES TO ENSURE THERE ARE A PLURALITY OF TV ADVERTISING OUTLETS FOR LOCAL BUSINESSES**

- 5.4 Although ITV1 does sell in ‘micro regions’, the vast majority of airtime is bought in bulk by media agencies on behalf of ‘national’ brands. A single agency will often commit to acquire airtime on an annual basis. This mechanism ‘crowds out’ local independent advertisers. ‘Regional’ advertising on ITV1 is generally sold to local firms at a substantial premium to that paid by agency buyers.<sup>42</sup>
- 5.5 The UK is almost entirely alone in failing to offer independent businesses a plurality of TV outlets from which to choose to place their local and regional advertising. This has the effect of pricing television out of the budgets of the vast majority of independently owned businesses.

#### **WHY A NEW NETWORK IS NEEDED TO BREAK ITV1’S MONOPOLY OF REGIONAL ADVERTISING**

- 5.6 Independent businesses cannot reach their full potential without a more level advertising playing field with their ‘national’ rivals. It would seem highly inequitable for not one single channel (out of 30+ on Freeview) to offer realistic affordable advertising solutions to local businesses seeking to enhance their own profitability.
- 5.7 A new ‘sixth’ public service network, selling in 50+ micro regions, would help to create a more level advertising playing field between local and ‘national’ brands.

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<sup>41</sup> It is reported that, in the US, local advertising typically makes up around 55 per cent of local TV station advertising

<sup>42</sup> Regional advertising is not covered by the CRR mechanism imposed on ITV plc in 2003

## DIGITAL TECHNOLOGY HAS MADE IT POSSIBLE TO PRODUCE 'NETWORK' QUALITY CONTENT AT 'LOCAL' COST

- 5.8 With digital production techniques, it is now possible to produce a local news programme that meets the high standards modern viewers would expect from any mainstream TV network.
- 5.9 In particular, the following developments make it possible to create compelling programme content, but at very low cost:
- **multi-skilling** – reporter, researcher, camera and editor roles can largely be replaced by just one 'video journalist' who produces reports and features;
  - **light-weight digital cameras** – enabling video journalists to shoot their own material;
  - **remote control studios** – eliminating the need for separate studio camera personnel;
  - **chromakey technology** – enabling computer generated backgrounds to be displayed on a green screen, removing the need for large studios;
  - **broadcast automation** – allowing many transmission functions to be automated using digital files stored on a playout server; and
  - **integrated workflow** – enabling files to be edited using workstations linked to the main playout system, low-cost internet technology generally being utilised to feed the latest news reports from video journalists to the editor at the hub centre.
- 5.10 Media courses across the UK are producing graduates who possess the core competences to produce high quality television – many without jobs to go to. Local TV would help create a raft of new employment opportunities for this talent.

## THE LOCAL TV BUSINESS MODEL SUMMARISED<sup>43</sup>

- 5.11 Whilst the cost of local news may vary, it is easy to see how a high quality 30 minute news magazine programme can be produced by only a small number of multi-skilled journalists.
- 5.12 A typical news programme would be made up of short packages that are generally gathered and edited that day, and linked by a 'live' studio-based presenter. Packages will often contain local interviews that are recorded in 'real time', generally eliminating the need for substantial post-production. The reports produced for a news programme may be repeated several times during a 24 hour period (as is the case with network news programmes).<sup>44</sup>

## ASSUMED REVENUE AND COSTS FOR LOCAL TV BASED ON OFCOM/DCMS ANALYSIS

- 5.13 Existing Ofcom/DCMS analysis suggests a local TV channel can produce high-quality local news for circa £550 per half-hour. At least 5 minutes of this programme is likely to include advertising (current rules allow 12 minutes per hour during peak times). In its simplest

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<sup>43</sup> All references to "Ofcom/DCMS" business modelling are taken from "The economics of delivering local digital audio-visual and interactive services", Spectrum Strategy Consultants, 2005

<sup>44</sup> Re-running a newscast or feature is common practice on the smaller US cable local TV channels. Therefore, contrary to popular perception, the 'cost per hour' of quality news programming is reasonably moderate for a local TV channel.

terms, this represents an average of 20 advertisers paying a rate of £27.50 each for a 15 second spot within the flagship local news.<sup>45</sup>

- 5.14 As is common in other broadcast media, the best value advertising is likely to be offered to clients signing up to an annual airtime package. This would ensure clients are rotated across all time zones over the course of a week. By way of example, if just 70 companies were to sign up to a 12 month advertising campaign at an average rate of £350 + VAT per week, this would produce an annual turnover of approaching £1.3m from spot advertising alone.
- 5.15 The appeal of “*TV advertising at newspaper rates*” is likely to prove attractive to many local businesses. Local TV would significantly enhance the range of options for local display advertising, for the first time making TV affordable for many businesses.
- 5.16 The modest levels of advertising revenues set out above reflect reasonable expectations for local TV in some of the smaller sub-regions of the UK. The much larger DTT sites would generally be expected to surpass this very modest level of sales.

### **SUPPLEMENTARY INCOME FOR A LOCAL TV SERVICE**

5.17 Core local airtime sales would be supplemented by other sources of revenue such as:

- national advertising;
- sponsorship;
- commercial production;
- teleshopping;
- programme sales;
- on-screen local listings: births, marriages, deaths, birthdays; property, motors, services;
- facilities – corporate production and facilities hire to third parties;
- brand extensions (e.g. events) and internet advertising;
- local authority support and public funds.

5.18 Ofcom/DCMS analysis suggests that a base ‘local news’ channel could break-even on a cost base of as little as £461,000 per annum, breaking down as follows:

Programming costs	£227,000
Distribution costs	£73,000
Sales and marketing costs	£49,000
Staffing costs	£111,000
<b>Total costs</b>	<b>£461,000</b>

5.19 The Ofcom/DCMS analysis suggested there could be significant additional cost-savings and synergies by operating a ‘cross media’ and/or ‘network affiliate’ business model. For instance, smaller local TV channels might have field journalists reporting to a news ‘hub’,

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<sup>45</sup> Experience of local media sales around the world suggests that cost per thousand impacts is rarely as important in the sale of local advertising as it is in the sale of ‘national’ advertising. Local advertisers are often willing to build a fixed weekly standing order into their annual budgets. This is especially likely to be true for local TV in the UK. Since there is unlikely to be significant competition in a local market for television advertising, constant comparison of CPT rates is of little value. Even as competition intensifies, the best rates will remain available to those signing-up for long term campaigns.

sharing management, sales staff and premises with the neighbouring local TV station. These cost-efficiencies are unlikely under Ofcom's proposals for local TV in the interleaved spectrum, where there would be no guarantee any neighbouring local TV channel would exist.

## **THE TOP 50 LOCAL RADIO STATIONS AND NEWSPAPERS ARE 'CASH COWS'**

- 5.20 The top 50 local radio stations and regional newspapers in the UK are all highly profitable 'cash cows'.
- 5.21 In general, advertisers are willing to pay a premium to advertise on the market-leading radio stations and newspapers in a local market. According to one of the UK's leading media planning agencies, Opera Media, part of Omnicom:<sup>46</sup>

*"The same top 25 (radio) stations have increased their revenue from 2003 to 2005 by 10% (source: NMR) but because of competition for their audience they have collectively lost 15% of listening hours (source: RAJAR various)...Significantly for the shape of commercial radio as a sector, despite losing 15% of their audience over two years, the top 25 radio stations maintained 55% share of total revenue, even though the share of listening has reduced from 45% to just 38%."*

- 5.22 A local TV channel is unlikely to have significant competition from other television outlets for advertising spend in a local market. This is likely to mean that, if the UK could be split into around 40-80 local TV regions, these would form a highly profitable network. In theory, 50 regions would produce an 'average' population in each of approximately 1.2m. In practice, population coverage varies radically between all of the sites served by DTT station transmitters. The larger stations could, typically, be expected to be more profitable for a local TV service than the smallest.

## **WHAT IS THE OPTIMAL NUMBER OF SEPERATE CHANNEL 6 FRANCHISES?**

- 5.23 In theory, one video stream on a universal multiplex could, adopting add/drop, provide 1,152 completely separate Channel 6 franchises. It would be for Ofcom to consult on the franchise 'map' to agree a configuration of transmitters that form a 'natural community' serving population sizes that are financially viable, therefore capable of sustaining a high quality service
- 5.24 The number of franchise areas on which Ofcom might consult could be anywhere between 40 and 80 – the likelihood being that a consensus would form somewhere between these numbers.<sup>47</sup> In some cases, it may be prudent to consult on partially aggregating the smaller DTT sites with their neighbours in order to further enhance their viability. For instance, licence conditions could permit greater use of shared region / nation content in smaller markets, as is also the case in local radio.<sup>48</sup>

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<sup>46</sup> *OPera Economic and Media Forecast for 2006, Business and Advertising Planning*, OPera Media Limited, November 2005

<sup>47</sup> The ultra-prudent Ofcom/DCMS analysis in 2005 assumed a stand-alone local TV operator would be capable of sustaining a core news service targeting a potential audience of around 700,000. This excluded any cost-efficiencies or sales synergies arising from adopting a network affiliate model with UK-wide scale. It also did not take account of the benefits of attaining priority status on the EPG.

<sup>48</sup> There is considerable evidence that smaller scale services (such as Channel 9 TV in Derry) can still achieve good turnover, partly due to high viewer loyalty and, possibly, less aggressive competition in the market place. However, in general, it would be prudent for the very smallest services to have less significant licence conditions than the largest.

## THE BUSINESS MODEL FOR CHANNEL 6 ON DVB-T IS CLEAR

- 5.25 Post-switchover the majority of households are likely to have access to DVB-T on at least one set (either via an STB or IDTV). Therefore, the appeal of DTT carriage is that a channel is available on a very wide basis. Further, the audience for local TV is likely to be concentrated on one TV channel.<sup>49</sup> The audience share for a local TV service will therefore be high – and not fragmented across hundreds of different competing local services.

## THERE IS NO BUSINESS MODEL FOR LOCAL TV ON THE INTERNET

- 5.26 Whilst there is an obvious business model for advertiser-funded local TV channels on DTT, there is currently no obvious business model for local TV channels on the internet.<sup>50</sup>
- 5.27 As the Ofcom/DCMS analysis concluded, the internet offers a very unattractive model for much more than user generated local content. Display advertisers lose the advantage of being able to obtain a high reach amongst their target audience in 'one hit' and must spread their advertising spend amongst many (possibly thousands) of sites. In practice, the vast majority of internet advertisers already do this by purchasing 'key words' on search engines rather than buying space on one specific site. No one site can be sure of obtaining sufficient penetration to justify the costs of producing high quality original local programming.
- 5.28 Internet Protocol TV can be seen to be most suited to content that has wide geographic appeal and can be viewed many times over an extended period. This contrasts to local TV where news material has a narrow geographic appeal and generally loses its attractiveness after 24 hours.

## OFCOM/DCMS ANALYSIS SUGGESTS LOCAL TV CANNOT BE VIABLE WITHOUT DTT

- 5.29 The local TV business model clearly lends itself to DTT more than any other platform. Analysis conducted on behalf of Ofcom/DCMS suggests that a local TV network based around a network of 50+ sub-regions would be commercially viable, so long as it is able to secure access to DTT on reasonable terms.
- 5.30 This report's main conclusion was that local TV is not viable without access to DTT:
- "In metropolitan scenarios, the greatest impact is felt when DTT is extracted, suggesting that this platform is **core to the delivery of a profitable service...**"*
- 5.31 Ofcom has published no new evidence to suggest why any reasonable person should reach a different conclusion to that of the Ofcom/DCMS report which described DTT is "core" to the viability of local TV.

## THE LOCAL TV BUSINESS MODEL IS ROBUST AND PROVEN WORLD-WIDE

- 5.32 It is surprising that Ofcom appears to have so much difficulty understanding the local TV business model given that it is proven to be successful with audience and advertisers world-wide.
- 5.33 The US market provides an example of how profitable and robust the local TV business model really is.

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<sup>49</sup> It is desirable that incremental local TV channels emerge over time. These may or may not target similar audiences. Under the proposals put forward by United for Local Television, a local TV service would have the opportunity to establish itself and gain a good level of market penetration pre-DSO.

<sup>50</sup> The issue of widely diverging broadband penetration and access speeds is also fundamental and yet to be resolved.

### Typical US local TV station revenue

1995-2005, Average across all US local TV stations that produce news<sup>51</sup>

Year	Nominal (\$)	Inflation Adjusted (\$)
2005	23.7m	25.7m
2004	25.8m	28.0m
2003	23.4m	25.4m
2002	23.9m	26.0m
2001	21.7m	23.6m
2000	25.3m	27.5m
1999	23.7m	26.1m
1998	23.5m	26.5m
1997	22.1m	25.3m
1996	21.4m	25.1m
1995	19.9m	24.0m

- 5.34 Local news is what particularly drives audience and revenues in the US. Local TV is far and away the most popular source of local news in the US – ahead of press and radio. Surveys suggest US local TV stations typically air 3.8 hours of news a day on weekdays. The latest Radio-Television News Directors Association (RTNDA) survey indicates that as much as 45 per cent of local TV station revenue in the US comes from the news department.

### Percentage of US local TV station revenue produced by news

2002-2005, All US local TV stations<sup>52</sup>

Year	Average Percentage
2005	44.9%
2004	42.8%
2003	46.1%
2002	39.7%

- 5.35 Both network affiliate and cross media models are successful in the US. 44 per cent of all US local TV news directors share their content with local radio stations. This could have a significant positive benefit to the commercial radio sector if replicated in the UK.

- 5.36 Many US stations serve populations of only a few hundred thousand. Although a number are affiliated to the major networks, others are independent or educational.

- 5.37 As Ofcom/DCMS analysis concluded after examining the US market:

*“The core of programming for local stations is its own local news that does not depend on the network affiliation.”*

- 5.38 The US experience is hardly unique. In almost all local markets throughout the free world, there is regulation in evidence to guarantee at least one (and often a plurality) of local television outlets. France has around 100 local TV channels, Italy around 500 and Spain around 1,000.<sup>53</sup> It appears absurd to suggest the UK might not initially manage to sustain a

<sup>51</sup> Source: *BIAfn MediaAccess Pro*, Inflation adjustment is based on 2002 US dollars, only commercial English-language stations broadcasting news programs are included. Note revenues traditionally peak in election years.

<sup>52</sup> Source: *RTNDA/Ball State University*, Note: Based on survey responses of news directors, 2006

<sup>53</sup> Source: *Digital Local: Options for the future of local video content and interactive services*, Ofcom, January 2006

new network of around 50 stations, representing just one service for each UK sub-region.<sup>54</sup>  
The only question is whether Ofcom will put in place the structure to allow it to happen.<sup>55</sup>

### **CHANNEL 9 NEWS CASE STUDY**

- 5.39 One of the smallest local TV channels in the UK is Channel 9 TV based in Derry/Londonderry (also serving Limavady, Coleraine and Strabane), targeting a potential adult audience of around 230,000.
- 5.40 For over six years, Channel 9 TV's nightly news programme attracted phenomenally high audience levels. Channel 9 TV commissioned research suggested that its local news at 6.00pm, produced by a core team of three video journalists, was watched by 48.5 per cent of the audience every week.<sup>56</sup> This reach is for just one 30 minute programme.

### **OFCOM'S SEPERATE PSB RESEARCH SUPPORTED LOCAL TV**

- 5.41 The Channel 9 experience is in line with the conclusion of Ofcom's first PSB review. According to Ofcom:

*"The English regions are often too large to be relevant to most viewers, who tend to live most of their day-to-day lives within at most 25 miles of their homes and be most interested in news and community issues within that range..."*

*"Both our qualitative and quantitative research suggests that people identify most strongly with their neighbourhood, town and city: If there were ways of delivering cost-effective TV services at this level, we believe they would be significantly more compelling than current regional provision."<sup>57</sup>*

### **LOCAL NEWS ON THE INTERNET MAY NOT BE ACCURATE OR BALANCED**

- 5.42 Many families are understandably concerned about opening up their living rooms to undesirable internet video content. Unlike a licensed local TV channel, a local news service on the internet need not be regulated by Ofcom and could be subject to inaccuracies, distortions and bias. There is nothing to stop business or other interests directly paying to influence local news on the internet in a manner which may not be obvious to the public.<sup>58</sup>
- 5.43 There is no evidence that UK citizens are ready to trust the internet as a source of news in the manner in which they trust licensed television services today.

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<sup>54</sup> United for Local Television advocates a 'core' local TV network of at least 50 stations using add/drop on a universal multiplex. United for Local Television anticipates these services would come to be supplemented by other small-scale stations in the interleaved spectrum serving many parts of the UK. In many cases, these smaller stations may benefit from 'chick/hen' relationships with support in programming and sales from the main Channel 6 service.

<sup>55</sup> Given the excess demand for capacity on Freeview, it is inconceivable there would be no takers for any Channel 6 licences. However, in the event that, during the award process, Ofcom found no credible operator for one or more of the licence areas, then the capacity could continue to be used to broadcast an interactive video stream from the BBC in these sub-regions or other 'network' content.

<sup>56</sup> Source: c9tv website, research by UMS / Millward Brown Ulster, 2001

<sup>57</sup> Phase II review of Public Service Broadcasting, Ofcom, 2004

<sup>58</sup> The Association of Television on Demand (Atvod) is the body which self-regulates the VOD industry although Ofcom has 'backstop' powers under the EU Audiovisual Media Services Without Frontiers Directive. The Government's Byron Revie is currently considering computer games and internet safety and is due to report in March 2008.

## **IN AN ATTEMPT TO UNDERMINE THE CASE FOR RESERVED CAPACITY FOR LOCAL TV, OFCOM MAKES TWO CONTRADICTORY ARGUMENTS, BOTH OF WHICH ARE UNFOUNDED**

5.44 Ofcom has consistently argued that DTT carriage only represents a very small proportion of the total costs of operating a local TV service. However, Ofcom is now seeking to argue the exact opposite, suggesting the internet is a more suitable distribution platform for local TV because it liberates providers from the high carriage costs of DTT. The two arguments completely contradict each other, and expose the failure by Ofcom to present a reasoned case for failing to reserve DTT capacity for local TV.

5.45 In May 2007 Ofcom's Carmel McLaughlin wrote to an existing RSL:

*"Our modelling suggests that spectrum costs will almost certainly be small relative to the costs of producing content."*

5.46 This view is reiterated in Ofcom's DDR statement, which says:

*"...intervening in the award of the digital dividend is unlikely to be a solution to the problems faced by local television operators. Simply reserving spectrum would do little to improve its business case given the high costs involved in producing television content that viewers want to watch and the challenging business model of local television in the UK."<sup>59</sup>*

5.47 In the same document, Ofcom argues against itself, saying:

*"...our modelling suggests that the quality of content which could be offered over the DTT platform may be limited (when compared to what may be possible over other platforms). **This is because broadcasting on this platform is costly (hence reducing the available funds for content.)**"*

5.48 Ofcom further claims:

*"...These factors combined with the costs of delivering content via the DTT platform (which in turn reflect the scarcity and value of this spectrum) suggest that the business model for delivering local content in this way is likely to face difficulties..... These challenges may be less severe on alternative platforms, such as the Internet, **as one of the key costs faced when broadcasting on the DTT platform, namely the cost of DTT capacity and/or spectrum, would be avoided.**"*

## **OFCOM CANNOT HAVE IT BOTH WAYS**

5.49 Ofcom cannot have it both ways. Either the cost of DTT capacity is relatively significant for local TV operators, or it is relatively insignificant. It cannot be both.

## **OFCOM'S CLAIMS ARE HIGHLY MISLEADING**

5.50 The business model for local TV is not especially challenging or difficult to understand. For Ofcom to refer to "*the challenging business model of local television in the UK*" is highly misleading. The main reason local TV has not proven financially viable in the UK is because it has been denied access to suitable spectrum to form a network and achieve scale. Ofcom's approach appears determined to perpetuate this failure.

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<sup>59</sup> Source: *Digital Dividend Review – A statement on our approach to awarding the digital dividend*, Ofcom, December 2007

## **IT IS UNACCEPTABLE CONDUCT FOR A REGULATOR TO QUOTE AS EVIDENCE BUSINESS MODELLING WHICH HAS NEVER BEEN PUBLISHED**

5.51 Ofcom implies it has discovered a new business model for local TV on the internet:<sup>60</sup>

*“...our modelling analysis supports the view that local television is most likely to find commercial viability....on alternative platforms, such as the Internet.”*

5.52 The 2005 Ofcom/DCMS analysis concluded that local TV needs to reach a critical mass of viewers on DTT to justify the cost of producing professional local news content. At no time has Ofcom published any new business model in order to refute this finding.

5.53 It is completely unacceptable for Ofcom to quote as “*evidence*” a business model which it has failed to make publicly available. If such a business model exists, it should be published and subjected to the rigour of public scrutiny. If no such business model exists, or it is based on unreasonable assumptions, Ofcom should resist from falsifying evidence to support its arguments.

## **FOR OFCOM TO SUGGEST LOCAL TV ON THE INTERNET COULD BE BETTER QUALITY THAN LOCAL TV ON DTT SUGGESTS IT HAS NOT MADE ANY ATTEMPT TO UNDERSTAND THE BUSINESS MODEL FOR LOCAL TV – OR EVEN READ ITS OWN STUDY ON THE ISSUE**

5.54 It is an important part of Ofcom’s role to produce objective evidence in order to help Government reach reasoned policy conclusions. Ofcom’s time would be productively spent understanding the Ofcom/DCMS business model within its possession, rather than quoting as evidence a new business model which it cannot publish or explain what its assumptions are based on.

## **INTERNET PROTOCOL TELEVISION IS NOT DIMINISHING THE VALUE OF DTT CAPACITY**

5.55 If the internet were viewed by the market as a more suitable broadcast platform than DTT then the cost of DTT multiplex capacity would be sharply depreciating.

5.56 The appreciating cost of DTT multiplex capacity reflects:

- (i) the artificially high price that inevitably results from vertically integrated multiplex operators hoarding capacity rather than releasing it to the market<sup>61</sup>; and
- (ii) the reality that multiplex capacity remains core to the success of existing and aspirant DTT broadcasters.

## **NO BROADCASTER OR ANALYST PREDICTS THAT IPTV WILL OVER-TAKE DTT IN THE FORSEEABLE FUTURE**

5.57 The BBC, ITV and Channel 4 are cooperating to launch a new internet-delivered content platform. It is understood this will primarily be a ‘catch up’ service distributing content that has already been shown on DTT.

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<sup>60</sup> Ibid

<sup>61</sup> The consultation document confirms: “*Vertical integration may mean that the operators might have greater incentives to hold on to capacity rather than sell it to someone whose service will compete with their own.*”

- 5.58 BBC modelling for its iPlayer Public Value Test forecast that on-demand video services would account for only 7 per cent of BBC television consumption by 2012. This is despite the iPlayer being heavily cross-promoted on the BBC's linear TV and radio platforms.

#### **THE INTERNET SUPPLEMENTS RATHER THAN REPLACES DTT**

- 5.59 United for Local Television acknowledges that the internet is likely to play an increasingly important role in supplementing DTT to enable consumers to obtain 'on demand' content and 'personalised' news and information.
- 5.60 It would be extremely challenging for a local TV operator to drive traffic to an internet site without a core DTT channel to use as a promotional window. The cost of local content can only be justified if it is widely available.
- 5.61 If Ofcom truly believes that the internet is likely to supplant DTT then the opportunity cost of assigning universal multiplex capacity to Channel 6 would obviously be negligible.<sup>62</sup>

#### **CHANNEL 6 WOULD ALSO BE ABLE TO PROVIDE NETWORKED PROGRAMMING**

- 5.62 In the consultation document, Ofcom states:

*"...viewers seem to be unlikely to watch local television for significant periods of time, hence the overall audience share of these services may be low, meaning that advertiser demand for airtime may be lower than for other services."*

- 5.63 There are many commercial TV channels that would be delighted to have high reach on a daily basis. However, it would be concerning if any person expressed a desire to view any channel for 24 hours a day. Clearly, the purpose of a 24-hour channel is that a viewer is able to dip in and out, at their convenience, at a time of their choosing and for the programmes of most interest.
- 5.64 Bizarrely, Ofcom appears unable to grasp that a local TV network might not necessarily only offer local programmes. This suggests Ofcom is completely ignorant of local TV and should take a flight to the US as a matter of urgency in order to experience the quality and popularity of local TV services at first hand.
- 5.65 News remains an 'appointment to view' programme. Viewers would tune in at a specific time on Channel 6 to gain their 'flagship' local news programmes. This provides a new reason to tune in daily and enables the service to cross promote other programming – including networked content. This 'network affiliate' model works well in many countries and Ofcom has suggested no reason why it would fail in the UK.

#### **SCALABILITY IS FUNDAMENTAL IN MAXIMISING THE VIABILITY OF LOCAL TV**

- 5.66 Having reviewed the local TV market overseas, Ofcom/DCMS consultants suggested that:

*"...economies of scale, offered by larger audiences and / or by the efficiencies of a network-affiliate model, appear crucial to the commercial sustainability of local services."*

- 5.67 The viability of a local TV channel operating in one area will be severely impacted if many other areas have no local TV provision. It is likely that local TV investors will generally be

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<sup>62</sup> It is particularly difficult to understand why an investor would want to launch an internet based model for local TV when faced with the serious ongoing threat of a licence-fee funded rival, cross-promoted by the BBC.

discouraged from participating in any auction process for any spectrum if there are extreme levels of uncertainty about whether a UK-wide local TV network will emerge.

- 5.68 Ofcom's proposal for a small number of disparate local TV channels, operating in isolation, is the least likely model to develop the high quality content which Ofcom recognises is demanded by consumers. Investment in original programming will inevitably be diminished as operators seek to meet the high overhead caused by operating a stand-alone business rather than being part of a UK-wide network with shared programming, resource sharing and access to 'national' sales.

## **Section 6 – Societal benefits: DTT v internet**

**THE SOCIETAL BENEFITS OF LOCAL TV ARE EVEN WIDER THAN ENHANCING LOCAL DEMOCRACY, COMMUNITY PARTICIPATION AND PROMOTING MUTUAL UNDERSTANDING AND RESPECT – THERE IS NO BETTER MEDIUM TO PROMOTE LOCAL EDUCATION, TRAINING & VOCATIONAL OPPORTUNITIES THAN A LOCAL TV CHANNEL ON DTT**

### **ASSESSING THE SOCIETAL BENEFITS OF LOCAL TV**

- 6.1 The notion that Ofcom can claim to have conducted rigorous analysis of the incremental social benefits of local TV on DTT is patently false. Ofcom has conducted no such analysis.<sup>63</sup>
- 6.2 No ‘citizens jury’ is capable of reaching a conclusion on any issue without evidence being presented. No witnesses were called to give evidence to Ofcom’s DDR focus groups and there was no opportunity for the evidence to be assessed. For non-experts to reach a conclusion on any issue of social policy without calling expert witnesses does not constitute a fair trial.
- 6.3 Nevertheless, it is clear that the citizen’s jury placed a high social value on local TV, as reported below.

### **ALL EVIDENCE FROM OFCOM’S RESEARCH SUPPORTS INTERVENTION FOR LOCAL TV**

- 6.4 Despite dubious methodology, it is understood from recent conversations with Ofcom that, in general, the DDR focus groups:
- did feel one channel on Freeview should be reserved as a local TV channel;
  - did not consider broadband was a suitable substitute platform for local TV;
  - favoured compelling content including SD channels such as Teachers TV and the Community Channel and did not favour pure-commercial quiz or shopping SD channels (considered likely to gain capacity in a market-led allocation); and
  - demonstrated extreme scepticism regarding any societal value in HD.
- 6.5 These core ‘headlines’ appeared surprisingly absent in the research references made by Ofcom in its DDR statement and accompany annex.<sup>64</sup>

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<sup>63</sup> Quantitative surveys regarding importance “to all UK citizens and society as a whole” are inevitably prone to respondents seeking to give the answer they feel the interviewer is expecting to hear. They are not generally helpful as many respondents would have minimal appreciation of the concept of external value.

<sup>64</sup> *Digital Dividend Review – A statement on our approach to awarding the digital dividend*, Ofcom, December 2007

## **OFCOM'S ASSESSMENT OF THE 'BROADER SOCIAL VALUE' OF LOCAL TV IS SPURIOUS**

6.6 Ofcom states:

*"There is some evidence to suggest that consumers and citizens attach a high BSV to local television...However, the available evidence does not suggest that the BSV generated by local television is disproportionately greater than the value generated by other potential uses...."*<sup>65</sup>

6.7 Ofcom seeks to argue that local TV would make a similar contribution to society as other likely users of DTT multiplex capacity. This argument is entirely spurious. All the evidence is that research respondents support intervention to deliver local TV on Freeview and are concerned that DTT capacity is not purely dictated by the market.

## **PREVIOUS FOCUS GROUPS HAVE CRITICISED THE QUALITY OF EXISTING SD SERVICES**

6.8 The concern of the most recent focus groups is in line with previous findings.

6.9 According to Ofcom's 2006 research:

*"Many of the current Freeview channels were thought to be of poor quality..... proliferation of new channels would be no guarantee of better quality, and indeed could lead to a 'dumbing down...'"*<sup>66</sup>

## **OFCOM APPEARS TO HAVE PUBLISHED A RESEARCH SUMMARY WHICH REFLECTS ITS PREDETERMINED VIEW**

6.10 It is difficult to understand why Ofcom conducted any research to assess social value, when the regulator's predetermined position is that it does not believe spectrum policy should take account of social value.<sup>67</sup> Perhaps this is the reason why Ofcom's DDR statement emphasises the least representative opinions, reflecting its own predetermined views.<sup>68</sup>

6.11 If Ofcom wishes to conduct a 'citizen jury' to determine whether or not universal DTT multiplex capacity should be reserved for local TV then United for Local Television would welcome the opportunity to present its case in detail.

6.12 A summary of the arguments relating to the positive externalities offered by local TV is presented in this section.

## **ENHANCING COMMUNITY RELATIONS – DOES LOCAL TV REALLY HAVE A SPECIAL ROLE TO PLAY COMPARED TO ETHNIC OR OTHER TARGETED TV CHANNELS?**

6.13 United for Local Television feels it is important to respond to Ofcom's comment that:

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<sup>65</sup> *Digital Dividend Review – A statement on our approach to awarding the digital dividend*, Ofcom, December 2007

<sup>66</sup> Source: *Digital Dividend Review, A report of consumer demand research conducted for Ofcom by Holden Pearmain and ORC International*, Ofcom, December 2006

<sup>67</sup> Ofcom states in its consultation, *Spectrum Framework Review*, 23 November 2004: "Ofcom is generally not in favour of spectrum allocation and assignment being used as a mechanism to achieve social policy."

<sup>68</sup> Ofcom's DDR research shows strong support for local TV and concludes: "The vast majority of participants opted for a future where everyone would have access to one service, as this was felt to be the fairest option." The research summary also explains why a direct comparison with previous research is not possible, something Ofcom goes on to do misleadingly (and without caveats) in its DDR statement. Source: *Digital Dividend Review Market Research 2007 Executive Summary*, Ofcom, November 2007.

*“...other kinds of interest or faith based communities not tied to geographic scope might equally offer benefits to groups of viewers and might in time emerge. This might reduce the demand for local television.”*

- 6.14 The concept that distinct groups in society will want to withdraw from their wider community is not one which we would expect Ofcom to encourage. People who live together in a community will always have shared interests. By definition, local news affects everyone. It is devoid of logic or reason for Ofcom to suggest the importance of local news will diminish in the foreseeable future.
- 6.15 If Ofcom has evidence of a diminishing demand for local news and information it should publish this evidence so it can be subjected to the rigour of public scrutiny. No such evidence has ever been published by the regulator. Therefore, Ofcom should refrain from using as evidence information that cannot be published or scrutinised and rely instead upon the evidence that is publicly available. This clearly shows overwhelming demand for local TV on Freeview.<sup>69</sup>

#### **A PURPOSE OF LOCAL TV IS TO ENCOURAGE MUTUAL UNDERSTANDING AND RESPECT**

- 6.16 It is almost certain there would be some ethnic and faith content on a local TV channel or other content targeting specific groups within a community. However, one of the core purposes of a public service channel is to help foster a sense of community amongst diverse groups.
- 6.17 A local TV service would aim to foster mutual understanding, tolerance and respect amongst those of different cultures, backgrounds and faiths. This is vital at a time in which racial and ethnic tensions are surfacing in many communities. Local TV is uniquely well placed to inspire debate on controversial issues in a balanced and responsible manner and encourage difference to be appreciated rather than feared.
- 6.18 It is completely irresponsible for Ofcom to suggest that local broadcasting should not have an increasingly important role to play in the arena of community cohesion and broader race relations.
- 6.19 For Ofcom to suggest that growth in religion might diminish interest in news is nonsensical. What is more, there is scant evidence that those who hold religious faith or beliefs, including the UK's Christian majority, are especially well served by the channels currently occupying the DTT platform. Faith groups are most likely to welcome the launch of a new 'sixth' public service network with a remit to encourage access and facilitate discussion on the matters of interest to the community.

#### **THE BROADER SOCIAL VALUE IN LOCAL TV – WHY IS THIS VALUE NOT SIMILAR TO OTHER APPLICATIONS AND SERVICES?**

- 6.20 As Ofcom, knows, in deliberative research, just under half of those asked ranked local television in first or second place from the perspective of value to society. Despite this, Ofcom states:

*“...the available evidence does not suggest that the BSV generated by local television is disproportionately greater than the value generated by other potential uses of the DDR (such as extra channels on DTT or mobile broadband).”*

- 6.21 Ofcom has failed to undertake any meaningful analysis to justify this statement.

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<sup>69</sup> Source: *Digital Dividend Review Market Research 2007 Executive Summary*, Ofcom, November 2007

- 6.22 United for Local Television certainly accepts BSV may be present in a wide range of applications including additional DTT or mobile broadband. The difference between these applications and local TV is that the market will generally deliver them in urban areas, with little or no risk of any market failure occurring. In contrast, a viable network of local TV channels is unlikely to be delivered without access to reserved capacity on a DTT multiplex.
- 6.23 It is highly misleading for Ofcom to seek to compare the BSV of local TV with other applications. Unlike these other applications, local TV cannot be expected to emerge if Ofcom fails to reserve any multiplex capacity for this purpose.

#### **THE INTERNET EXCLUDES MANY OF THOSE WHO WOULD BE MOST LIKELY TO BENEFIT MOST FROM ACCESS TO A LOCAL TV CHANNEL**

- 6.24 Even if a business model could eventually be developed for local TV on the internet, many of those who could benefit most from access to a local TV service have never used the internet.
- 6.25 In August 2006, the Office of National Statistics published the latest figures it has for UK internet usage. This showed 35 per cent of adults had **never** used the internet.<sup>70</sup> Of adults aged over 65, a total of 82 per cent have never used the net. These statistics are broadly in line with Ofcom's ongoing communications tracking data and experience in the US.

#### **EXPERIENCE ELSEWHERE DEMONSTRATES THE SOCIAL VALUE OF LOCAL TV**

- 6.26 The US experience suggests local TV is a mechanism to deliver news to people who may not otherwise consume any. Local TV can make 'national' issues appear locally relevant to an audience that may not necessarily engage in other news outlets. Local TV can also be seen to offer local people, including many at risk of exclusion and alienation, the all important opportunity to have a real stake in a public service at the heart of their communities.

#### **THE UK SUFFERS FROM MUCH POORER LITERACY AND NUMERACY THAN THE EUROPEAN AVERAGE**

- 6.27 Across Europe around 10 per cent of the population falls into the low skills category. In Britain the figure has traditionally been over 20 per cent – 8 million people are considered so poor at reading and writing that they cannot cope with the demands of modern life.<sup>71</sup>
- 6.28 Nearly 40 per cent of adults in some parts of England cannot read or write properly or do simple sums according to a Basic Skills Agency's report in May 2000.<sup>72</sup>

#### **A STATED PRIORITY OF THE UK GOVERNMENT IS TO IMPROVE BASIC SKILLS FOR ADULTS**

- 6.29 It is a stated priority of the UK Government to enhance basic literacy and numeracy skills for adults.<sup>73</sup> The Leitch Review of Skills in 2006 recommended a great increase in the pace of skills acquisition in order to keep the UK competitive. Objectives for 2020 included a new target that 95 per cent of all UK adults achieve the basic skills of functional literacy

<sup>70</sup> Source: *First Release – Internet Access, Households and Individuals*, National Statistics, August 2006 (Coverage: United Kingdom, Theme: Social & Welfare)

<sup>71</sup> Source: *International Adult Literacy Survey*, 1998

<sup>72</sup> Source: National Literacy Trust website

<sup>73</sup> The Skills for Life strategy for improving adult literacy and numeracy skills for England was launched in 2001 by the Department for Education and Skills (DfES) now the Department for Children, Schools and Families

and numeracy, an increase from levels of 85 per cent literacy and 79 per cent numeracy in 2005.<sup>74</sup>

- 6.30 Increasing the pace of skills acquisition is an immense challenge since, by definition, leaflets, posters and newspaper advertisements targeting the illiterate may never be read by the target audience.

### **THOSE WHO CANNOT READ OR WRITE GAIN NEARLY ALL OF THEIR INFORMATION FROM TELEVISION**

- 6.31 Those who struggle with reading and writing gain nearly all of their information from television. The functionally illiterate are one of the least likely groups to use the internet as a resource for local information. The unemployed and those on low incomes are also disproportionately less likely to have a home internet connection.
- 6.32 The greatest demand for local TV comes from low income sub-groups, the over-65's and those with minimal interest in digital technology. In the latter category, a remarkable 50 per cent of the entire group rate local TV on Freeview as their preferred application.<sup>75</sup> That is why one of the most appropriate mediums to promote education, training, employment opportunities and other public services in any given area is a local terrestrial "Channel 6".
- 6.33 Whilst there is a role for on-line learning for adults, free-to-air television is the most obvious medium to target those lacking in basic skills. Crucially, local TV is able to target its programming to promote local projects and initiatives, creating partnerships with local service providers.<sup>76</sup>
- 6.34 Ofcom research, conducted for the DDR, shows 16 per cent of adults are interested in watching "educational/informative programmes" on a local TV channel.<sup>77</sup>

### **THE INCREMENTAL SOCIAL GAIN WHICH LOCAL TV OFFERS ON DTT CANNOT BE REPLICATED ON THE INTERNET**

- 6.35 Internet television is an exciting and developing business model. However, IPTV cannot replicate the social gain of a free-to-air terrestrial platform, available on a universal basis.<sup>78</sup>
- 6.36 Ofcom's statutory duty is to consider "*the needs of persons with disabilities, of the elderly and of those on low incomes*". Ofcom's failure to ever conduct any consultation on launching local TV on a universal multiplex reflects a shocking disregard for its duties to some of the most vulnerable in society.

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<sup>74</sup>To download the full report visit [www.hm-treasury.gov.uk](http://www.hm-treasury.gov.uk)

<sup>75</sup> Source: *Digital Dividend Review Market Research 2007 Executive Summary*, Ofcom, November 2007

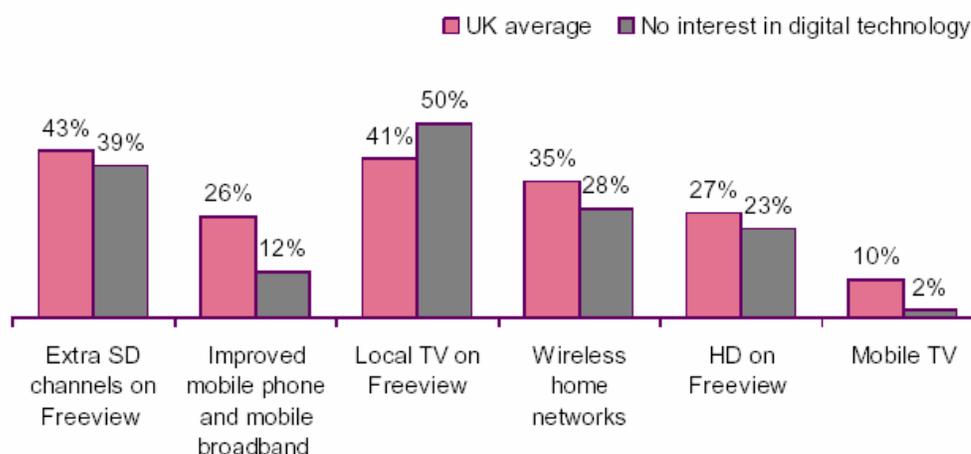
<sup>76</sup> Existing RSLs such as SIX TV have produced compelling examples of the need for local TV to support local self-improvement and community cohesion projects. The South East England Regional Skills for Life Campaign recently concluded that SIX TV in Oxford provided "*pound for pound, the most effective impact*" for its basic numeracy campaign. (Source: Oxford Broadcasting Limited)

<sup>77</sup> Source: *Digital Dividend Review Market Research 2007 Executive Summary*, Ofcom, November 2007

<sup>78</sup> For example, whilst Northern Ireland was one of the first areas in Europe to offer 100 per cent broadband availability, only 40 per cent of households have broadband access in Northern Ireland (2007) compared to the UK average of 51 per cent and 48 per cent have no internet access at all (UK 39 per cent). In North Belfast, this rises sharply with 63 per cent having no internet access (Source: *Continuous Household Survey 2006*). Belfast has had an RSL local television service (NVTv) since February 2004 supported by an active citizenship. For example in Shankill 1 (Super Output Area), organisations and citizens have been instrumental in supporting the output of the RSL. In this area only 3.2 per cent have degree level or higher level qualifications, 57.5 per cent are economically inactive and 55.6 per cent of the unemployed are long term unemployed. Few of these citizens would benefit from an internet-based service.

## THE HIGHEST DEMAND FOR LOCAL TV IS FROM THOSE WHO ARE SCEPTICAL ABOUT DIGITAL TECHNOLOGY

6.37 The absurdity of Ofcom’s suggestion that local TV is best suited to the internet is demonstrated by its own research. This shows the highest support for local TV on Freeview comes from the sub-group who are most sceptical about using digital technologies.<sup>79</sup> This is the group who most want to watch a local TV channel but would be excluded from doing so if Ofcom’s suggestion for an internet-exclusive business model was implemented.



Source: Ipsos MORI survey 2007 UK Base: 1,049, no interest in technology: 217

## LOCAL TV IS A MERIT GOOD

6.38 Local TV is a merit good. It is not possible to place a purely monetary value on such public benefits as educated citizens, informed democracy, cultural understanding, access and inclusion and quality of life.

6.39 Failing to reserve any capacity for local TV will result in the general denial of programming to UK viewers that provides civic information and promotes engagement with local democracy, local educational initiatives, local public services and local issues.

6.40 As Ofcom itself notes:

*“Many of the potential benefits of local services are social benefits that are unlikely to be taken into account by the market: social cohesion, democratic engagement, better-informed and more active citizens.”<sup>80</sup>*

6.41 It appears likely that these positive externalities are generally more tangible, meaningful and realisable for local TV services – close to the communities they serve – than for the ‘national’ non-PSB services that Ofcom proposes to grant continued access to universal multiplex capacity.

<sup>79</sup> Source: *Digital Dividend Review Market Research 2007 Executive Summary*, Ofcom, November 2007

<sup>80</sup> *Digital local: Options for the future of local video content and interactive services*, Ofcom, December 2006

## **DELIVERING ON PUBLIC SERVICE AGREEMENTS**

6.42 A local Channel 6 is ideally placed to deliver on a number of governmental public purpose agendas as outlined by the recent cross-departmental Public Service Agreements, including (but not limited to):

- community cohesion;
- the 'voice' agenda;
- increasing involvement in the democratic process;
- diversionary activities for young people;
- volunteering;
- education;
- training; and
- the increasingly important media literacy and skills agendas.

## **A VOICE FOR THE THIRD SECTOR AND GROUPS OFTEN MARGINALISED IN SOCIETY**

6.43 Channel 6 would provide a focal point for the community and for local area partnership agendas. Third sector organisations are part of the fabric of modern society – often trusted by their users because they are neither state or market. Channel 6 would provide a voice for voluntary organisations to communicate with their community – explaining their activities and appealing for wider support.

6.44 Crucially, Channel 6 will open up programme-making opportunities, providing the benefits and transferable skills which local volunteers and trainees can gain from engagement with the broadcast and production process. There is considerable evidence the disengaged can be attracted to make a positive contribution to society as a result of involvement in media, gaining skills they can take with them into their working and social lives.

6.45 Those often marginalised in society – older people, the disabled, young people and ethnic groups will have the opportunity to make programmes and express their voice.

## **THE DEMAND FOR LOCAL NEWS IS AS HIGH AS EVER**

6.46 The demand for access to news and information on events, activities and services within a local community remains as strong as ever. In a modern democracy, it is shocking that there is no dedicated local news channel, universally available, focused on local events, local people and local issues.

## **CHANNEL 6 WILL ENHANCE SPORT AND PARTICIPATION**

6.47 Channel 6 will have a major role in promoting sporting and leisure activities for all ages.

6.48 Local leagues and amateur associations will gain television coverage, for the first time.

6.49 London and Glasgow will have their own dedicated 'sixth' channels on DTT for the 2012 Olympic Games and 2014 Commonwealth Games respectively, able to provide news and information to residents and visitors.

## THE FUNDAMENTAL QUESTION OFCOM HAS FAILED TO ANSWER

- 6.50 The fundamental question is to consider what will make the greatest incremental contribution to the public welfare:- one new UK-wide channel (in addition to the 30+ UK channels already on DTT) or one 'ring fenced' local channel offering local news, local production and local advertising, as occurs in almost all other countries in the free world.
- 6.51 Professor Martin Cave recognised the need for spectrum to be reserved for public purposes in his review of radio spectrum management in which he wrote:

*"The review recognises therefore the need for Ministers to retain a strategic power of direction over Ofcom in order to reserve spectrum allocations for identified uses or users to fulfill public policy goals... Most importantly, the Government has powers to ensure that all current **and future** public service broadcasting channels remain available to all households, if necessary, by reserving digital multiplex capacity for them."*<sup>81</sup>

## THERE ARE IMPORTANT COMPETITION GROUNDS TO SUPPORT CHANNEL 6

- 6.52 In a market economy, it is important that independent businesses have reasonable access to at least one TV channel that offers local advertising opportunities, in order to be able to compete effectively against the 'national' brands who tend to dominate TV advertising.
- 6.53 ITV1's highly marginalised 'regional' programming currently has a 100 per cent monopoly amongst commercial TV in most parts of the UK. This is not a healthy position for protecting and enhancing regional and sub-regional news or other programming of real compelling interest to the viewer in a multi-channel environment. Competition stimulates innovation and quality. A monopolistic environment leads to higher prices for local advertisers and poorer quality for local viewers.
- 6.54 Access to spectrum by local groups for local news, local discussion and local advertising should be a right in a free and fair society. There are important competition grounds, in addition to social policy and citizenship grounds, for ensuring universal DTT capacity is reserved for a sixth public service network focused on local content.

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<sup>81</sup> (Our emphasis) *Review of Radio Spectrum Management, An independent review for Department of Trade and Industry and HM Treasury, 2002*

## **Section 7 – Regulatory framework for Channel 6**

### **THE LEGAL & REGULATORY FRAMEWORK FOR CHANNEL 6 WAS ENVISAGED IN THE CA03**

#### **CHANNEL 6 WOULD REQUIRE NO NEW PRIMARY LEGISLATION**

7.1 The CA03 foresaw there could be a future requirement for a new category of TV license focused on serving the interests of local communities. The Secretary of State has the power, under section 244 of the CA03, to present an Order to Parliament introducing a framework for local digital television.

7.2 The CA03 envisages new local TV services which meet:

*“...the needs of the area or locality where they are received....broaden the range of television programmes available for viewing by persons living or working in that area or locality, and....increase the number and range of the programmes about that area or locality that are available for viewing, or to increase the number of programmes made in that area or locality that would be so available.”*

7.3 The Act further envisages new services launching which bring:

*“...social or economic benefits to the area or locality....or....cater for the tastes, interests and needs of some or all of the different descriptions of people living or working in the area or locality...”*

#### **GOVERNMENT POLICY IS TO IMPLEMENT SECTION 244**

7.4 The former broadcasting Minister, Lord McIntosh, confirmed to RSL operators when in office that it was the Government’s intention to use section 244 of the CA03 to introduce a new category of local TV licence. Work on drafting this Order was started, but not progressed, in order to allow Ofcom to complete its separate review of the digital dividend.

7.5 Whilst discussions have continued with Government policy advisers, the local TV sector has generally found it difficult to enter into dialogue with senior executives at Ofcom. There is a serious concern that the Ofcom Board will take irrevocable decisions on the assignment of universal multiplex capacity, in effective conspiracy with the incumbent analogue broadcasters, without fully appreciating the case of other public service content providers.

#### **USING THE PSB REVIEW TO CONSULT AND PREPARE FOR CHANNEL 6**

7.6 United for Local Television proposes that Ofcom thoroughly assesses the benefits of creating a new ‘sixth’ public service network as part of its second review of PSB now underway. At the same time, the DCMS could work on a parallel consultation considering the terms of a Local Television Order. Channel 6 licences could be issued in 2009 and start broadcasting as soon as possible thereafter (for instance, by taking over pre-DSO capacity currently used by a BBC interactive video stream).

7.7 It is conceivable that Channel 6 would be able to launch, across the UK, at least two years before the completion of DSO. This would give it the opportunity to establish its brand prior to the launch of new DTT services that may access the released spectrum post-2012.

## CHANNEL 6 WOULD HAVE LOCAL CONTENT COMMITMENTS GREATLY IN EXCESS OF ANY EXISTING NETWORK

7.8 Initial Ofcom research suggests that “viewers’ demand is for only one or two hours of (local) programming a day.”<sup>82</sup> Assuming this is correct, Channel 6 would substantially address the deficiencies in existing local news provision on UK television.

7.9 By way of example:

- Channel 6 could provide dedicated news programmes to at least **50** sub-regions across the UK. This is more than **3 times** the number of news programmes offered by BBC1 for the UK’s nations and regions.
- Based on Ofcom’s initial research, which indicates viewers demand around 2 hours of original local content a day, Channel 6 could be expected to provide **4 times** the level of new non-networked programming as BBC1 in peak-time.
- In major cities there could be specific news bulletins targeted at micro regions within the coverage area (e.g. a London channel may have a news programme for North London, followed by South London, East London and West London). This contrasts to the wide-area regional news provision reflected in the limited time available for non-networked content on the BBC.
- Existing RSLs often show programmes produced by universities and community groups. Channels could have licence conditions to encourage local debate and discussion, community access, social action, participation and independent production. There would be a wide range of opportunities for local groups, charities and individual citizens to access schedules with locally relevant content, enhancing the plurality of voices and opinions broadcast. This contrasts to the centralised and homogenous format of the ‘in-house’ BBC regional news style which limits opportunities for innovation and experimentation or in-depth analysis.
- Further original programming could be produced dedicated to the nations of the UK and Government Office Regions of England. This contrasts with the excessively limited nation and region non-news content on the BBC.

7.10 As these examples show, even though some Channel 6 franchise areas may be similar in **size** to existing regional provision from BBC1 and ITV1, the **content** would still be very different.

## MINIMISING THE RISK OF REGULATORY FAILURE

7.11 The main benefit of introducing Channel 6 is that it will correct market failure in the provision of local TV programming and advertising on the DTT platform. It will also provide a new outlet for wider public service content on DTT and further enhance the level of competition and plurality of voices on the platform.

7.12 The main risk of Channel 6 is that Ofcom over-regulates the service so that it fails to achieve its true potential value to society. However, it is within Ofcom’s power to minimise this risk by not over-regulating the service, and by reviewing regulations over time. Ofcom already does this with other PSB operators for which it has responsibility.

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<sup>82</sup> Source: *Digital Dividend Review – A statement on our approach to awarding the digital dividend*, Ofcom, December 2007

## **LIGHT-TOUCH REGULATION**

- 7.13 The licensing conditions for Channel 6 should be established following research into consumer and citizen preferences for a new public service network. Regulation should be minimised to the absolute essential conditions considered vital following consultation on this research.

## **ALLOWING THE MARKET TO DEVELOP FREELY WHILST ADDRESSING CLEAR EVIDENCE OF MARKET FAILURE**

- 7.14 Wherever there is regulation, there is a risk of regulatory failure. It is important for Ofcom to seek to regulate in a manner which corrects market failure whilst minimising the risk of regulatory failure.
- 7.15 Should the DTT platform be overtaken by newer technology, such as IPTV, then public policy in relation to all six DTT multiplexes in the retained spectrum will require reassessment, not just the Channel 6 service.

## **LOCAL TV SHOULD ACCESS MULTIPLEX CAPACITY PAID-FOR BY THE BBC**

- 7.16 The fundamental issue is not whether capacity should be 'free' for local TV channels but, rather, whether local TV should be allowed to exist.
- 7.17 There are a number of methods of 'pricing' the value of any capacity assigned to Channel 6. The most obvious would be to require the capacity is gifted to Channel 6 by the BBC without charge but then to ensure licensees provide public service commitments at least to this value.
- 7.18 In cash terms this would involve no financial loss to the BBC since it has already fully budgeted to meet its multiplex operational costs. Further, the licence fee would be helping to meet the public purposes of local TV which the BBC expressly put forward as an objective at the time of the renewal of its Royal Charter.
- 7.19 BBC Director General, Mark Thompson, is quoted as telling the CBI:

*"Our aim is to create a new model of local television, centred on news, information and community partnerships and we will work with public, private and voluntary sector partners to build and sustain the pilot service..."<sup>83</sup>*

- 7.20 The BBC ultimately recognised it did not have the resources to launch a full-scale local TV service. The most obvious method of delivering the BBC's goal of a "*new model of local television*", working in partnership with the private sector, is to gift a video stream on BBC multiplex capacity to a new local TV network.

## **IT WOULD NOT BE REASONABLE TO EXPECT CHANNEL 6 TO PAY THE BBC FOR ACCESS TO MULTIPLEX CAPACITY**

- 7.21 Although a beneficiary of direct funding, the BBC does not pay market-based spectrum pricing for its multiplex capacity and administered incentive pricing is not due to be introduced by Ofcom until 2014. The BBC is not therefore paying a commercial price for the spectrum it uses and, as a non-commercial organisation, it would be wrong for it to profit from charging a new public service for use of its own gifted spectrum assignments.

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<sup>83</sup> BBC Press Release, 13/03/05

## **A PRECEDENT EXISTS FOR ALLOWING NEW PUBLIC SERVICES ONTO UNIVERSAL MULTIPLEXES WITH GIFTED CAPACITY**

7.22 A precedent has already been set for allowing non-PSB services to access universal multiplex capacity. For example:

- The Government has directed that capacity be reserved for the Republic of Ireland's TG4 service in Northern Ireland at DSO.
- The Community Channel, operated by the Media Trust, is already granted 'gifted' access to BBC multiplex capacity (6-9am). The Community Channel is an independent service funded mainly by the Cabinet Office's Office of the Third Sector and does not pay for the capacity gifted to it by the BBC.<sup>84</sup>

7.23 It is not financially viable for the three commercial multiplexes to provide universal DTT coverage so this public policy goal has been left to the three universal multiplexes. It is right that the cost of universal coverage be met by the licence fee payer. Universal coverage is a public policy goal which should be funded by the licence fee.

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<sup>84</sup> The Media Trust is a member of the Public Voice coalition, one of the founder partners in United for Local Television

## Section 8 – The technical model for Channel 6

### USING ADD/DROP TO DELIVER CHANNEL 6 IS SIMPLE AND EFFECTIVE GENERATING VIABLE SUB-REGIONS WITH UK NETWORK SCALE

#### A PRACTICAL SOLUTION FOR LOCAL TV

- 8.1 To date Ofcom has failed to put forward any practical proposals to meet the public demand for local TV on Freeview. The proposals contained in this section are designed to meet three core objectives by guaranteeing:
- (i) every part of the UK has its own local Channel 6 service, providing universal coverage, thereby maximising network scale;
  - (ii) local Channel 6 franchises are successful by targeting markets of a size that is viable to sustain high quality local news and current affairs; and
  - (iii) technical simplicity using multiplex capacity in spectrum that has already been retained by Government for DTT.

#### DEVELOPING LOCAL TV THAT IS FINANCIALLY SUSTAINABLE

- 8.2 All advocates of local TV would acknowledge that local TV must be of a high quality to engage local audiences. To this end, it is important to consider the size of geographic areas which are capable of sustaining high quality content. The business model for local TV is outlined in section 7.
- 8.3 In practice, the geographic areas for a new local TV network are already, to a large extent, pre-determined by the existing major DTT stations. There is no avoiding the reality that a high proportion of viewers point their rooftop aerials to the larger DTT sites, although access to relays is also very important to ensure that local TV maximises its coverage (especially on secondary TV sets).

#### ADD/DROP ADDS UP

- 8.4 Ofcom states that ‘add/drop’<sup>85</sup> offers:

*“....the most consistent and convenient solution, and potentially offers the widest reach for local TV.”<sup>86</sup>*

- 8.5 Add/drop would be technically straight forward to provide a unique Channel 6 service to 50 or more sub-regions of the UK. The local Channel 6 video stream would be inserted at each of the UK’s larger DTT transmitter stations.<sup>87</sup>

<sup>85</sup> Add/drop denotes an approach in which a ‘national’ multiplex operator would add local content in a particular region at the expense of a UK-wide channel.

<sup>86</sup> Source: *Digital local: Options for the future of local video content and interactive services*, Ofcom, 2006

<sup>87</sup> This submission assumes the optimal number of add/drop sites be consulted upon by Ofcom as part of the process of reviewing the Channel 6 proposition.

## **CHANNEL 6 SHOULD BE CARRIED ON A UNIVERSAL MULTIPLEX**

- 8.6 Channel 6 could theoretically be carried on new multiplexes using either cleared or interleaved spectrum in the digital dividend'. However, Ofcom has made clear it is in favour of auctioning the 'DDR spectrum' on an application and technology neutral basis to maximise flexibility and enable the market to determine usage.<sup>88</sup>
- 8.7 The most suitable multiplex for Channel 6 is a universal multiplex to ensure every citizen is able to receive a local news service on DTT at DSO. To enable Channel 6 to launch pre-DSO, United for Local Television advocates that one of the three video streams used by the BBC for its 'red button' interactive services is re-assigned by Ofcom.

## **OFCOM HAS A DUTY TO FULLY CONSULT BEFORE REACHING ANY NEW POLICY CONCLUSIONS**

- 8.8 The following is an extract from Ofcom's DDR statement (source):

***“Further research should be undertaken into the use of add/drop technology for local television use.***

*“This view was supported by several local television operators and organisations. They argue this technology should be used to provide universal coverage for local television (using all 1152 transmitters) and because it was the only solution to offer commercial viability and public service access. Respondents also stated that add/drop is particularly preferable in capacity made available by change of transmission mode on existing multiplexes.*

*“We believe that reserving DTT capacity for local television would not provide optimum use of the spectrum because it would prevent access for other services and may not be utilised in all areas. Broadcasters could still utilise add/drop technology by acquiring a multiplex at auction. Securing capacity on an existing DTT multiplex is also an option already available to operators subject to commercial negotiations.”<sup>89</sup>*

- 8.9 United for Local Television is surprised that Ofcom has expressed any opinion on add/drop in its (unrelated) DDR policy statement. If Ofcom wishes to adopt a policy 'for' or 'against' the use of add/drop to provide a sixth public service network then it should publish a detailed consultation on the issues with an associated impact assessment. To reach a policy conclusion without any consultation, denying interested parties the ability to contribute to the debate, is in direct contradiction of both Ofcom's consultation principles and its regulatory principles.

## **TO ADOPT ANY POLICY ON ADD/DROP WITHOUT CONSULTATION IS INEXCUSABLE**

- 8.10 Advocates of add/drop have consistently asked Ofcom to take the initiative and consult on the merits of reserving capacity for a new public service network on a universal multiplex. For Ofcom to continue to dismiss such requests reflects a cavalier approach to its statutory duties and a lack of concern for the overwhelming public demand for local TV on Freeview.
- 8.11 Ultimately, Ofcom may consider that it has the prerogative to ignore the demand for local TV and place the UK out on a limb, denying local broadcasters access to universal

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<sup>88</sup> Source: *Digital Dividend Review – A statement on our approach to awarding the digital dividend*, Ofcom, December 2007

<sup>89</sup> Ibid

capacity to the detriment of all citizens. For Ofcom to take this stance without following any due consultation process is completely inexcusable.

- 8.12 It is wrong for Ofcom to seek to pre-judge the outcome of this consultation, its PSB review and any future selection process for DTT capacity by expressing a view in a policy statement on an issue (unrelated to the DDR) upon which it has never consulted. United for Local Television can only assume the inclusion of this view in its DDR statement was a mistake and Ofcom will undertake a full, open and objective consultation on the case for Channel 6 as an urgent priority.

#### **OFCOM SHOULD CORRECT MISLEADING COMMENTS IT HAS MADE ABOUT ADD/DROP**

- 8.13 Ofcom acknowledges that it would be simple to use add/drop to insert local programming at the 50 main station sites in the UK. However, Ofcom implies that it may be difficult to insert local programmes at additional transmitter sites.

- 8.14 Ofcom states:

*“Add/drop boxes can in principle be installed at any transmitter to insert local programming. The boxes are, however, most easily added at the 50 main transmitters where all of the signals needed are available on site. It would be possible to install add/drop boxes at the smaller ‘relay’ transmitters but a good deal more equipment and corresponding investment would be required to put signals into the correct format.”<sup>90</sup>*

- 8.15 Even if Ofcom were right, add/drop can be seen to allow for 50 programme variations forming a viable network for local TV. However, Ofcom is wrong. Following discussions with Ofcom a leading transmission operator has confirmed that the cost and complexity of implementing add/drop at a ‘daughter’ (relay transmitter) site would not be fundamentally different to doing so at a ‘parent’ or main site. United for Local Television understands that it is now agreed that both main and relay transmitter sites are fundamentally equivalent to equip in terms of both cost and complexity.
- 8.16 Ofcom has now privately conceded that add/drop is inherently flexible, allowing for daughter transmitters to cost-effectively provide a ‘split’ service from their parent, subject to demand. Ofcom should confirm this new information in public.
- 8.17 United for Local Television proposes that Channel 6 forms a UK-wide federation made up of at least 50 franchise areas (and potentially many more subject to consultation).

#### **COMPARING ADD/DROP TO EXISTING “LOCAL TV” DISTRIBUTION CHANNELS**

- 8.18 To understand the advantages of add/drop it is useful to consider the failures of previous distribution channels used for local TV in the UK.
- **Cable:** The first attempt to introduce local TV in the UK was on cable. In general, the failure of the cable industry to achieve high subscriber targets (which is ongoing) meant relatively few people were able to view these early local TV services.
  - **RSLs:** The RSL regime was an attempt by Parliament to allow interleaved frequencies to be used to introduce a new tier of local TV across the UK. The regime did not achieve its objective for the principal reason that the vast majority of frequencies assigned were (i) out of group with existing rooftop

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<sup>90</sup> *Technical options for terrestrial local television services*, Ofcom, February 2007

aerials and/or (ii) subject to highly restrictive power levels and antenna patterns in order to protect fringe reception of the five main analogue channels and DTT. As a result, the signal coverage of RSLs was generally inadequate, often highly degraded (i.e. 'snowy') and varying from house-to-house. As with the cable regime, the majority of viewers were left with no reception.

- **Satellite:** MKTV and Solent TV were two examples of local TV channels which failed to develop a viable business model using Sky. Other services, such as MATV and Channel M, have found satellite coverage can be used productively to supplement coverage obtained from other platforms. However, it is difficult to justify UK-wide satellite distribution costs, representing a high proportion of the turnover of a local TV service. It could be argued that satellite offers the worst of all worlds for those targeting medium sized markets – the high costs of UK-wide distribution but only modest penetration of the target market.

## ADDRESSING THE FAILURES OF THE PAST

- 8.19 If viewers complain they cannot receive a service, then advertisers will be reluctant to spend on it. Local TV advertisers want to be seen on TV – the same TV as the other major channels, without the need for specialist equipment. This is true for local authorities as well as commercial advertisers. The main lesson learnt from the past is that local TV must be broadcast on the same terrestrial platform as the other main free-to-air channels to be attractive to advertisers.
- 8.20 'Add/drop' learns from previous failures. Every DTT household will receive their local Channel 6. The signal will be of the same strength as BBC1 or ITV1. Wherever you live in the UK, Channel 6 would be a local channel. This includes secondary sets such as portables in kitchens and bedrooms which are an important source of total TV viewing.
- 8.21 A secondary lesson from previous experiments is that a small number of local channels, each operating in isolation, does not create a viable network to bid for programme rights, share management resources or attract agency advertising and sponsorship. UK-wide advertisers, as with local advertisers, expect to receive comprehensive coverage in order to justify their investment. 'Add/drop' learns this lesson, by ensuring a network of local TV channels achieves UK-wide scale and coverage.

## EFFECTIVE COMPETITION TO ITV1 FOR LOCAL ADVERTISING

- 8.22 As can be seen add/drop provides a neat, cost-effective and workable method to deliver a sixth public service network to every UK citizen. Channel 6 would be a new UK-wide network, focused on local content, able to provide effective competition to ITV1 for advertising spend in local, regional and 'national' markets.

## WHY 25 INTERLEAVED FREQUENCIES ARE ENTIRELY INADEQUATE FOR CHANNEL 6

- 8.23 Ofcom has suggested that around 25 interleaved frequencies might be suitable for building a new DTT network which could, potentially, carry new local TV channels.<sup>91</sup>
- 8.24 United for Local Television believes the 25 interleaved frequencies suggested by Ofcom are not, on their own, suitable for the deployment of a successful new public service network focused on local communities. This is because, inter alia:

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<sup>91</sup> Source: *Digital Dividend Review – A statement on our approach to awarding the digital dividend*, Ofcom, December 2007

- (i) Around half the UK population will be unable to receive any local TV channel using the 25 site 64QAM 2/3 theoretical model proposed by Ofcom (and actual coverage would be lower than this given that theoretical antenna templates are impossible to reproduce in practice).<sup>92</sup> Even this assumes those served by existing relays will change their aerials – experience suggests many will not. This is inadequate to develop a local TV network with meaningful scale, leaving many major counties and cities with no service. In many areas, there would be no neighbouring local TV channel with which to seek to share costs and achieve synergies, making it much more difficult to sustain a viable service.
- (ii) The top of DTT masts are already occupied, thereby reducing coverage even further from the predictions offered by Ofcom. Whilst a small loss of coverage in a locality may have a marginal impact on a ‘quasi-national’ TV service, it could have a material impact on a local TV service.
- (iii) The cost of producing antenna to meet the restrictions imposed would be high.<sup>93</sup> It could even transpire that, given existing DTT operators are unlikely to welcome competition for the supply of multiplex capacity, they might seek to obstruct any antenna access to DTT sites post-auction. It could be argued, for instance, that they must prioritise mast access for new applications (e.g. DVB-H, further DVB-T/T2) across all bands. This would effectively render a package of interleaved spectrum acquired by a local TV operator as completely unusable. Such a level of risk is unlikely to be acceptable for local TV investors including any public-body supporters.<sup>94</sup>
- (iv) Even if mast access was on offer, the site owners would know that they have the power to determine whether or not a new multiplex could launch. Consequently, they would be in a position to dictate the terms for granting site access. Economic theory suggests this would lead to excessive rates. Successful bidders for interleaved spectrum would effectively end up paying twice for the right to broadcast – once for the spectrum and then again to monopoly site owners. Given the high level of work involved in the DSO programme, it could be some years before these issues are resolved, if at all. In contrast, add/drop capacity would become available immediately pre-DSO assuming that the BBC were directed to re-assign an interactive video stream.<sup>95</sup>
- (v) As discussed in Section 8, the profit maximising use of this interleaved spectrum is almost certainly for a network operator to acquire the largest channels and amalgamate them to provide a new sub-UK multiplex. This will offer up to 10 new SD video streams (assuming DVB-T). It is not generally in the commercial interests of a multiplex operator to ‘regionalise’ video streams as this denies access for a UK-wide service who could be expected to pay a premium for the capacity.

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<sup>92</sup> Whilst QPSK 2/3 might provide modestly higher coverage, this modulation would be unlikely to be commercially viable given the costs of network deployment. Further, QPSK 2/3 modulation would be unlikely to advantage the majority of people who could be expected to point their aerials to the DTT sites concerned.

<sup>93</sup> Ofcom’s proposals assume new DTT applications in the interleaved spectrum will not be able to share use of existing transmitter aerials at main station sites

<sup>94</sup> To maximise reception and minimise interference issues, local multiplexes in the interleaved spectrum would generally have to be co-sited with national multiplexes. Mast access is not currently regulated for new multiplex providers.

<sup>95</sup> Over the years, many RSLs have expressed dissatisfaction with the rates charged for site access and transmission services from suppliers.

## **AT MOST SITES, IT IS HIGHLY UNLIKELY THAT ANYONE WOULD DEVELOP OFCOM'S SUGGESTION TO 'SPLIT' INTERLAVED FREQUENCIES**

- 8.25 Ofcom has suggested a single interleaved frequency channel could be 'split' to enable a multiplex operator (using directional antenna) to target different geographic areas. Whilst theoretically possible, this could prove technically challenging and expensive. Overall, there would be an aggregate loss of population coverage, and it might be difficult to predict how well it would work without experimentation.
- 8.26 It is not yet clear to what extent commercial multiplex operators would favour this suggestion. Whilst a local TV channel could conceivably benefit from the arrangement – all other services on the same multiplex would undoubtedly be against it. This could make the option unviable in most instances.
- 8.27 The manner in which Ofcom packages interleaved spectrum for auction might effectively 'kill' this option before it is ever tried. If a bidder was interested in only using a frequency to provide a DTT service in one direction, they would presumably be forced to out-bid rivals targeting a much bigger audience by using a more conventional, omni-directional, aerial pattern. Unless this was addressed in the auction design the suggestion would appear to be of little value.

## **SUMMARISING THE MAIN BENEFITS OF ADD/DROP**

- 8.28 Using add/drop, there would be 50+ different variations of local TV service reaching 98.5 per cent of the UK population. EPG insertion would be straightforward. The cost of network build would be modest and the Channel 6 network could launch almost immediately, without having to await the completion of DSO.
- 8.29 As the Ofcom/DCMS analysis indicated, a network affiliate mode is crucial to enable a viable network to share programming, resources and 'national' sales. In contrast, Ofcom's suggested use of interleaved frequencies, without any local content conditions, is highly unlikely to lead to the development of a viable local TV network. Ofcom's proposal would leave the majority of the UK population, if not all, without access to a local TV service.

## **Section 9 – Developing smaller-scale local TV**

### **USING RELAY SITES TO DELIVER SMALLER SCALE LOCAL TV COULD COMPLEMENT CHANNEL 6 WITH HUNDREDS OF ‘ULTRA LOCAL’ SERVICES USING INTERLEAVED CAPACITY**

#### **ENABLING LOCAL TV TO EMERGE AT SMALLER RELAY SITES**

- 9.1 The major DDT transmitter station sites are, by their nature, generally intended to reach high population numbers. Whilst commercially attractive, they do not allow for targeted coverage of just a few thousand (or even hundreds) as is possible from some relay sites.
- 9.2 United for Local Television would expect there to be many smaller commercial and, particularly, ‘not-for-profit’ organisations interested in operating their own independent local TV services from DTT relay sites. Many of these organisations have yet to be formed – not least since they are unaware of an opportunity which, in any case, does not yet exist.
- 9.3 A raft of new ‘ultra local’ channels would further enhance plurality of local media provision. In many instances, Channel 6 licensees could be expected to work closely with and support ultra local channels including, for instance, sharing relevant news and other content.

#### **OFCOM HAS NOT STATED HOW IT WILL ENABLE ACCESS TO SMALLER RELAY SITES**

- 9.4 Ofcom has decided to release interleaved frequencies at locations served by around 25 of the larger existing analogue TV transmitter sites.<sup>96</sup> It is difficult to understand why Ofcom has chosen this number, except to make its own life as simple as possible.
- 9.5 United for Local Television would urge Ofcom to be much more radical – and to reserve interleaved frequencies suitable for local TV at all of the 1,152 DTT sites to be used for DTT post-DSO. This would be in line with the current Community Radio and radio RSL licensing regime where FM or AM frequencies are made available to groups, on demand, judged to meet the stated criteria.

#### **OFCOM SHOULD IMPOSE LOCAL CONTENT CONDITIONS ON DVB-T MULTIPLEXES IN THE INTERLEAVED SPECTRUM**

- 9.6 United for Local Television proposes that at least one video stream on any new DVB-T multiplexes introduced within interleaved spectrum must be reserved for a local TV service as a WTA licence condition. This is entirely compatible with an application and technology neutral approach to releasing this spectrum to the market. There would be no reserved access for any local TV service unless and until the spectrum was used for DVB-T.
- 9.7 A multiplex operator would be free to assign all capacity as they see fit, with the exception of one 24-hour video stream which Ofcom would award using an appropriate selection

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<sup>96</sup> Source: *Digital Dividend Review – A statement on our approach to awarding the digital dividend*, Ofcom, December 2007

process.<sup>97</sup> This 'must carry' status would represent a modest intervention to mitigate the risk of market failure and achieve Ofcom's statutory duties to citizens, thereby achieving the optimal use of spectrum.<sup>98</sup>

- 9.8 'Must carry status' on an interleaved multiplex is not proposed as an alternative to licensing Channel 6 as a universal network with UK-wide scale. 'Ultra local' services in the interleaved spectrum would supplement the Channel 6 service and provide new opportunities for local TV advertising.

#### **OFCOM'S DUTY IS TO PROPOSE APPROPRIATE LICENCE CONDITIONS**

- 9.9 One of Ofcom's core roles is to implement appropriate licence conditions to achieve broadcast policy objectives. Unless Ofcom imposes 'must carry' conditions on DVB-T multiplexes using interleaved spectrum, there is a high risk that capacity most suitable for local TV will be used for lower-value applications.
- 9.10 Where there are two DVB-T multiplexes using interleaved spectrum, there should be reserved access for two 'ultra local' TV services (one service on each multiplex). As part of the licensing process, Ofcom could ensure that the two services target different core audiences. By way of example, at Winter Hill one video stream might target viewers in and around Greater Manchester and the second viewers in and around Merseyside.<sup>99</sup>

#### **OFCOM MUST PRIORITISE RELEASING INTERLEAVED FREQUENCIES AT ALL OF THE 80 DTT STATIONS USED BY COMMERCIAL MULTIPLEX OPERATORS**

- 9.11 There is proven demand for DTT at the 80 transmitter sites used by the commercial multiplex operators. If there was no demand for DTT at these sites, they would not be in current use. Ofcom should not require any further evidence of demand to be persuaded to release interleaved spectrum in these areas to the market.
- 9.12 Ofcom should release two 'good' interleaved frequencies, suitable for DTT, at each of the 80 commercial DTT transmitter sites as a priority. Whilst it is likely the larger sites will be acquired by transmission network operators, there may be some opportunity for independent operators at the smaller sites. The assignment process should be carefully designed to maximise the opportunity for new entrants.

#### **OFCOM SHOULD REVIEW THE SUCCESS OF THE LOCAL RADIO, COMMUNITY RADIO AND RADIO RSL REGIMES**

- 9.13 United for Local Television would urge Ofcom to review the success of the Community Radio licensing regime which, in its first two years, has produced hundreds of high quality applications – far more than originally anticipated by Ofcom's Radio Licensing Committee. In many cases these include licence applications supported by small voluntary groups, charities and publicly funded bodies. Similar groups may well be interested in applying for local TV licences at DTT relay sites, adopting innovative business models (e.g. use of volunteers) which do not appear to have occurred to Ofcom. In remote or rural areas, it is conceivable that some may only broadcast for a few hours a week, or a few days a month. Such broadcasts could be highly valued in these communities.

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<sup>97</sup> In the unlikely event that no credible local TV service comes forward during the selection process then, at Ofcom's discretion, this capacity could be re-assigned to the multiplex operator to use as they see fit.

<sup>98</sup> 'Must carry' status for local TV is entirely compatible with spectrum trading and liberalisation. The 'must carry' status would only apply if and when an interleaved spectrum package is used for DVB-T.

<sup>99</sup> A key licence condition should be to extend choice by offering a service that is distinctive from Channel 6 licences. For instance, the local TV service might target a much smaller city, town or village than the wider Channel 6 service.

- 9.14 Almost all radio licence applications (even for smaller areas) have proven hotly contested. There is substantial demand for radio RSLs, including for special events and for religious festivals such as Ramadan. It is wrong for Ofcom to seek to write-off small-scale local TV.

### **IT IS UNACCEPTABLE FOR OFCOM TO HAND OVER RESPONSIBILITY FOR LOCAL TV TO A BAND MANAGER WITHOUT FULL CONSULTATION REGARDING THE IMPLICATIONS**

- 9.15 Members of the United for Local Television group were always led to believe, from Ofcom, that whilst planning for use of interleaved frequencies at the largest DTT station sites would take priority, this would not preclude the use of frequencies at smaller DTT station sites. The proposal that a Band Manager be delegated responsibility for the management of local TV is entirely new and has not been fully consulted upon. United for Local Television would urge Ofcom to properly consider and consult widely on the likely costs, benefits and risks of this new proposal.
- 9.16 It is important to note that, if interleaved frequencies are not released by Ofcom, they are likely to remain idle. The demand for PMSE use is generally concentrated in major urban areas. In more rural and semi-rural areas, the vast majority of interleaved frequencies will continue to remain unused. In many of these areas, the three universal multiplexes are the only DTT services that viewers will be able to receive post-DSO. Additional DTT choice would therefore be likely to be welcome by local residents and public bodies.

### **IF A BAND MANAGER HAS NO DUTY TO LICENCE LOCAL TV THEN IT IS LIKELY THEY WILL NOT DO SO**

- 9.17 A profit-maximising Band Manager may not be incentivised to assign interleaved frequencies at marginal DTT relay sites for non-PMSE uses. If a local TV group is unable to pay a substantial sum to the Band Manager then the strong likelihood is that they would not release the frequencies, preventing them from being used. A Band Manager's priority may be to minimise their own administrative costs, even though there could be no competing demands on interleaved spectrum.
- 9.18 At best, a Band Manager may be expected to release frequencies for local TV at marginal relay sites only on a short-term basis. This would generally not be conducive to those seeking to make significant investments in the development of a long-term sustainable local TV operation.
- 9.19 A Band Manager, seeking to maximise revenue, would almost certainly only plan to release interleaved frequencies at the largest DTT sites, thereby denying access to more marginal relay sites for community use.

### **ANY SINGLE FREQUENCY ASSIGNMENT REQUIRES UK-WIDE PLANNING**

- 9.20 DTT frequency assignment is a science which requires careful planning. It would be nonsensical for Ofcom to allow interleaved frequencies to simply be assigned on a 'first come first served' basis. Every assignment has an impact on other possible future assignments. It is therefore essential for Ofcom to carefully plan, in advance, in order to maximise UK-wide coverage. It is also vital this planning process considers the important public policy objective of enabling access to the smaller DTT sites as well as the larger ones.<sup>100</sup>

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<sup>100</sup> Use of interleaved frequencies for DTT will inevitably have a marginal impact on fringe reception of the six DTT multiplexes in the retained spectrum. It is vital to define terms which protect existing DTT use without precluding access to interleaved spectrum for additional DTT.

- 9.21 Ofcom has a statutory duty to secure the optimal use of spectrum. One thing is certain – if Ofcom refuses to release spectrum on sensible terms then it cannot be used.

### **OFCOM MUST CONTINUE TO PROTECT LOCAL TV ACCESS TO INTERLEAVED FREQUENCIES**

- 9.22 RSLs have always shared access to interleaved frequencies with PMSE. At no time has the Government repealed the provisions for RSLs in the BA96. Ofcom therefore has a duty to consider the most appropriate method of licensing RSLs (both event and long-term) using available frequencies.
- 9.23 United for Local Television supports Ofcom's proposal to appoint a Band Manager as a reasonable interim protection for PMSE users. However, it is questionable whether a Band Manager will possess the skills and experience relied on by Ofcom to award broadcast licences using comparative selection criteria. It would be a failure of Ofcom's duties in relation to broadcasting to simply delegate the assignment of interleaved spectrum most suitable for local TV without proper consultation.<sup>101</sup>
- 9.24 It would be perverse for state-funded institutions to have to pay a premium to 'buy back' spectrum Ofcom had gifted to a Band Manager in order to put this spectrum to productive community use.

### **THE OPPORTUNITY COST OF RESERVING INTERLEAVED SPECTRUM FOR LOCAL TV AT RELAY SITES IS NEGLIGIBLE**

- 9.25 Ofcom's proposal, to release interleaved frequencies suitable for local TV at only 25 of the UK's 1,152 DTT station sites, could deny valuable broadcasting opportunities to hundreds of community, public sector and smaller commercial groups, thereby failing to achieve the optimal use of spectrum.
- 9.26 Socially valuable new local TV services would not interfere either with existing DTT coverage or secondary uses of the retained spectrum (e.g. PMSE). It is equally inconceivable any future cognitive devices would require the whole of the interleaved spectrum, assuming any such devices ever receive Ofcom approval. The opportunity cost of reserving 'good' frequencies for local TV at relay sites is therefore modest.
- 9.27 United for Local Television suggest Ofcom retain ultimate control of the 'good' interleaved frequencies suitable for local TV at DTT relay sites even when appointing a Band Manager to administer the remainder of the interleaved spectrum.<sup>102</sup> If Ofcom persists with its current proposal, it would need to ensure the Band Manager is in possession of the skills, direction and authority to implement an 'RSL' licensing regime for small-scale local TV.

### **A LICENSING FRAMEWORK FOR SMALL-SCALE LOCAL TV EXISTS IN BA96**

- 9.28 The RSL licensing regime implemented by the ITC is suitable for small-scale local TV using interleaved assignments. Digital RSLs could be issued on demand to residents

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<sup>101</sup> Ofcom's duty is to encourage access to spectrum for innovative uses – not to discourage spectrum use. By giving responsibility for local TV to a Band Manager, whose first priority is to protect PMSE, Ofcom is in danger of recreating the discredited 'priority list' which gave occasional use of radio microphones greater priority over permanent RSLs in the analogue domain.

<sup>102</sup> All that is required is for Ofcom to place a condition on a Band Manager to avoid using 'in group' interleaved frequencies within a given radius of DTT station sites. These 'in group' frequencies would then be retained by Ofcom for a future 'RSL-style' local TV licensing regime. The definition of 'in group' should include neighboring frequencies to the main aerial group. Where no good 'in group' frequencies are available, the next 'best' frequency should be reserved. The greatly increased penetration of wideband aerials (as a result of Freeview) now starts to make some 'out of group' frequencies suitable for new DTT applications assuming sensible power levels.

associations, community groups or commercial operators to enable them to broadcast to a defined area.

- 9.29 The main fault of the RSL regime was the lack of suitable frequency availability. This resulted from a lack of adequate planning by the ITC – a mistake Ofcom appears intent on repeating by assigning almost all suitable interleaved frequencies to a Band manager.
- 9.30 For all its faults, the RSL licensing regime allowed a range of models to develop (e.g. ‘commercial’ such as Channel M in Manchester and ‘community’ such as NVTV in Belfast). The licensing process need not be administratively burdensome but could be similar to Ofcom’s current radio RSL scheme, upon which the original TV RSL licensing process was loosely modelled.<sup>103</sup>

### **OFCOM SHOULD NOT EXPECT LOCAL TV OPERATORS TO DECLARE THEMSELVES MANY YEARS BEFORE DSO**

- 9.31 Ofcom states it will auction packages of interleaved spectrum where there is clear evidence of demand for local TV use. There is, however, only one method of measuring evidence of demand and that is by releasing spectrum to the market via a fair and transparent assignment mechanism.
- 9.32 Far from adopting a market led approach, Ofcom is actually intervening to **prevent** spectrum from being released to the market. Any attempt to assess ‘evidence of demand’ simply relies upon prospective bidders revealing themselves and their strategy in advance of a contest. Ofcom cannot expect prospective operators to declare themselves at this stage – thereby alerting potential competitors.
- 9.33 Ofcom should work on the assumption that there will be demand for frequencies suitable for local TV at **all** DTT station sites over the course of the coming two decades. Given the importance of minimising the impact on the coverage of the six DTT multiplexes detailed planning for this network should be taking place now. If Ofcom does not start this planning now, there is a strong danger that there will be no suitable frequencies for RSLs at hundreds of relay sites where there could be demand for ‘ultra local’ services.

### **OFCOM’S PROPOSAL IS TO ONLY RELEASE INTERLEAVED CHANNELS LEAST LIKELY TO BE USED FOR LOCAL TV**

- 9.34 Ofcom is aware that the demand from transmission network operators for interleaved frequencies is mainly restricted to the ‘top’ DTT station sites. These are the sites which network operators could most be expected to ‘cherry pick’ to launch a new ‘partial-UK’ DTT multiplex.
- 9.35 The sites which are the least attractive to network operators are the smaller relay sites which can serve populations of only a few thousand.
- 9.36 By choosing to limit the auction of interleaved frequencies to the largest DTT sites, Ofcom would appear to be acting at the bequest of major transmission operators seeking to pick-off the largest sites for a new commercial multiplex. Ofcom is deceiving nobody (except perhaps itself) by claiming its policy is designed to facilitate the roll-out of a UK-wide local TV network.

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<sup>103</sup> Even if Ofcom were to choose a stand-alone WTA regime (using an auction process) to assign the interleaved frequencies suitable for local TV, this could still enable local content to emerge at hundreds of relay sites. United for Local Television proposes that there should be a local TV ‘must carry’ condition imposed on one video stream wherever interleaved spectrum is used for DVB-T.

## **A LOCAL TV FUND TO ENCOURAGE COMMUNITY BROADCASTING**

- 9.37 Section 359 of the CA03 envisaged the possibility of a fund to encourage community broadcasting – both radio and TV.
- 9.38 United for Local Television advocates the ‘top slicing’ of the television licence fee to help generate a Local Television Fund (“LTVF”). The LTVF could be administered by Ofcom in a similar manner to the current Community Radio Fund supported by the DCMS.

## **PART OF THE LICENCE FEE SHOULD BE HYPOTHICATED TO SUPPORT COMMUNITY BROADCASTING**

- 9.39 There is no obvious form of accountability between the licence fee and the activities of the BBC. The licence fee is not a ‘subscription’ comparable to a members association where members can influence policy and elect the Board. The licence fee is a tax for which those who pay have no direct influence over how it is spent.
- 9.40 Contrary to popular perception, the issue of ‘top-slicing’ of the licence fee is far from new. When in 1954 the Government proposed an increase in the licence fee of £1 to help finance the launch of independent television, Herbert Morrison MP complained:

*“Why should I, as an ordinary citizen who does not want commercial television, be forced to contribute to the subsidising of it?”<sup>104</sup>*

- 9.41 Far from undermining the basis of the licence fee, ‘top-slicing’ to encourage local and community broadcasting would greatly enhance the justification of this poll tax. To date, the licence fee has been used to fund a single state broadcaster, enabling it to expand from two TV channels ten years ago to fill more than an entire DTT multiplex. This expansion has made no material contribution to production in the UK’s nations and regions over the past decade.
- 9.42 The LTVF could be designed specifically to encourage community broadcasting with grants for small producers and local independents, voluntary organisations, charities and the public sector. The LTVF could help make a substantial contribution to the development of local communities with no material impact on the BBC’s ability to supply quality public service television and radio.

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<sup>104</sup> *TV History, The Story of ITV*, Laurance Marcus, October 2005 – <http://www.teletronic.co.uk/itvstory1.htm>

## Section 10 – Consultation questions – the answers

### **OFCOM'S RE-ORGANISATION PROPOSALS FAIL TO OPTIMISE SPECTRAL EFFICIENCY, CHOICE, COMPETITION OR PUBLIC SERVICE PLURALITY, PLACING CONFIDENCE IN THE ADOPTION OF UNTRIED AND UNTESTED TECHNOLOGY**

10.1 The answers, set out below, should be read in conjunction with the other sections of this submission.

#### **Question 1: which services are most likely to drive take up of DTT consumer reception equipment using new technologies? In particular, are HD services the most likely to do so?**

10.2 It is impossible to answer a question for which Ofcom has conducted no research or offered any meaningful cost benefit analysis.

#### **OFCOM IS BASING INTERVENTIONIST POLICY PROPOSALS ON PURE CONJECTURE**

10.3 Ofcom states in the consultation document:

*"We think it is possible that HD services may be the services most likely to drive widespread and rapid take up of new reception equipment..."*

10.4 This is pure conjecture. Ofcom has produced no substantive evidence upon which to base this statement. It could just as easily be argued that the main competitive disadvantage of the DTT platform is the lack of quality SD choice and range on offer.

10.5 It would be extraordinary if Ofcom were to choose to gift spectrum to any broadcasters for any purpose without conducting any meaningful analysis of public demand for the proposed intervention.

10.6 With no evidence upon which to make any judgement, Ofcom is now proposing an extraordinary gamble with a large part of the UK's most valuable spectrum.

10.7 HD must never be allocated spectrum by administrative intervention without extensive public consultation, to include detailed research, and a thorough impact assessment.

#### **THERE IS LITTLE EVIDENCE NON-HD SUBSCRIBERS ARE WILLING TO UPGRADE**

10.8 It is negligent in the extreme for Ofcom to have failed to mention, anywhere in the consultation document, the results of its research which shows marked resistance to paying for new HD STBs.

10.9 When current non HD subscribers were asked about willingness to pay for an STB to access HD services, 35 per cent of respondents said that they would be willing to purchase a box if it cost £20. The proportion falls to 24 per cent where the cost is £40 and

to 13 per cent where it is £60.<sup>105</sup> This indicates the high potential for regulatory failure associated with Ofcom's proposal to facilitate the introduction of HD on DTT.

#### **THERE IS SIGNIFICANT EVIDENCE CONSUMERS AND CITIZENS DEMAND DTT CAPACITY BE USED FOR LOCAL TV RATHER THAN HD**

- 10.10 DVB-T is an existing technology which is likely to reach the majority of the UK population post-DSO. It appears absurd for Ofcom to facilitate the introduction of HD services using a new technology (T2) which is untried and untested anywhere in the world. All evidence suggests consumers and citizens would prefer to have local TV on DTT than HD.
- 10.11 For Ofcom to abandon market mechanisms and to use 'command and control' intervention to introduce T2 in order to facilitate HD, but refuse to assign capacity for local TV, flies in the face of all evidence of demand within its possession.

#### **OFCOM SHOULD BE INTERVENING TO FACILITATE THE SERVICES MOST DEMANDED BY CITIZENS, NOT THOSE FOR WHICH DEMAND IS LOW**

- 10.12 Prima facie, it is reasonable to assume that 10+ new SD services from new public service entrants would make a greater contribution to the achievement of public purposes than merely 3-4 simulcasts of existing SD services (or near-simulcasts). Ofcom has a duty to research and consider whether the public would prefer quality SD services from new entrants on DVB-T (with no STB upgrade costs) or HD simulcasts (with significant upgrade costs) before reaching any final conclusion on the best use of this capacity.

#### **THERE ARE VIABLE ALTERNATIVE OPTIONS TO PROVIDE HD – THERE ARE NO ALTERNATIVE OPTIONS TO PROVIDE LOCAL TV**

- 10.13 There is a very strong argument that the capacity constrained universal DTT platform is not suited to HD. HD is already available on Sky and Virgin Media and will soon become available on Freesat. The Freesat platform will have universal reach when it launches this year, four years before the proposed completion of DSO. This is before the launch of 'next generation networks' from major telcos, which will enable HD content to be downloaded 'on demand' over the internet.
- 10.14 By the time T2 set top boxes become commercially available (around 2011), there could be dozens of free-to-air HD services broadcasting on Freesat. By this time, acquiring an expensive new STB to receive just three HD channels on DTT may appear as attractive as acquiring a D-MAC receiver to obtain BSB.
- 10.15 In light of spectrum scarcity, the terrestrial platform was always designed to provide a choice of 'basic tier' channels to viewers and never the 'full' bouquet of services that other platforms might offer. The BBC has already suggested it could provide a 'light' HD service on DTT by using 'downtime' on existing SD services to push material to new (MPEG-4) PVR type devices. This service could launch immediately pre-DSO.

#### **THERE IS NO EVIDENCE OF GENERAL DISSATISFACTION WITH DTT PICTURE QUALITY**

- 10.16 Ofcom has produced no evidence of widespread consumer dissatisfaction with the current picture quality on Freeview (although this does vary depending on bitrates used by individual services). It is shocking that Ofcom has not once conducted any research to determine to what extent HD Ready set owners are satisfied with existing picture quality.

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<sup>105</sup> *Digital Dividend Review, Quantitative research findings 2007 – A report of an independent survey conducted by Ipsos MORI, Ofcom, November 2007*

- 10.17 It is notable that Ofcom has conducted extensive research of owners of DAB radios. This clearly demonstrated consumers prefer a greater range of audio services than enhanced audio quality.<sup>106</sup>

#### **OWNERS OF SECONDARY SETS AND SMALLER SETS GAIN LITTLE FROM HD**

- 10.18 One of the main purposes of the DVB-T platform is to feed secondary sets, even in households where the main set is connected to satellite or cable. The adoption of HD, by an entire universal multiplex, is likely to be of little or no value to viewers using portable sets or, indeed, any sets with screen sizes below 27 inches.

#### **ANY DECISION TO INTRODUCE HD ON A MULTIPLEX REGULATED BY OFCOM SHOULD BE TAKEN BY OFCOM NOT BROADCASTERS**

- 10.19 The incumbent PSB operators may have a commercial interest in simulcasting their main SD services in HD. This would have the impact of preventing the launch of rival SD services on the universal multiplexes.
- 10.20 Any decision on the assignment of multiplex capacity under the regulatory control of Ofcom should only be taken following a fair, open and transparent process in which new entrants are able to participate.

#### **THE RISK OF REGULATORY FAILURE IS SIGNIFICANT**

- 10.21 Ofcom's proposal does not constitute a short-term intervention that can easily be reversed. Any decision to introduce new standards, once taken, may never be reversed. If Ofcom proceeds, the UK could be stuck with HD channels unwanted by the vast majority of citizens monopolising an entire universal multiplex for the next three or four decades.
- 10.22 If a consumer invests in an HD set-top-box they are not going to expect the designated HD services to be withdrawn by the regulator in the near future, if at all. Ofcom's intervention could have long-term implications, subverting the optimal use of spectrum for many decades.
- 10.23 It would be unacceptable for Ofcom to rush any decision on this fundamental question.

#### **Question 2: do you agree with Ofcom's assessment that it would be beneficial for the DTT platform to begin to upgrade to new technologies – DVB-T2 and MPEG-4 – to make more efficient use of spectrum and to allow for the introduction of new services?**

- 10.24 As with question 1, it is impossible for any reasonable person to answer this question. The T2 standard is not yet agreed. Not only is it untried and untested but nobody knows which countries will choose to adopt it, if any. Whether consumers are willing to upgrade their equipment to receive new technologies is also unproven.

#### **OFCOM'S PROPOSAL REPRESENTS A SIGNIFICANT NEW INTERVENTION THAT HAS YET TO BE SUBJECTED TO ADEQUATE COST BENEFIT ANALYSIS**

- 10.25 Ofcom is aware of the inherent difficulties of attempting to 'pick' future technologies. The adoption of 'command and control' to allocate spectrum to new uses can 'crowd out' more valuable uses. The notion that a committee of public servants is better placed than the

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<sup>106</sup> Source: *The Future of Radio – The future of FM and AM services and the alignment of analogue and digital regulation (Consultation)*, Ofcom, April 2007

market to determine the next generation of television formats and standards sits ill at ease with Ofcom's stated spectrum policy as set out in its Spectrum Framework Review.<sup>107</sup>

- 10.26 Ofcom has consistently emphasised that the state is ill placed to predict which technologies are likely to be successful. For example, Ofcom has recently been most critical of the French decision to adopt T-DMB complaining to the French authorities publicly that:<sup>108</sup>

*"Mandating standards which limit the market's flexibility to respond to opportunities and consumer demand risks hindering innovation and the development of competition... Ofcom also believes that the interests of consumers and citizens are generally best served by allowing the market rather than Governments to decide which technical standards are most appropriate for particular service requirements. Consumers' needs are not monolithic and it is often highly advantageous to offer a choice of different technologies to meet their different requirements for complexity and sophistication."*

- 10.27 Even before its DDR process (which found little or no evidence of market failure in relation to HD), Ofcom argued:

*"New technologies and applications often face long delays in gaining access to spectrum in order to enter markets or expand services. It is increasingly important that the way spectrum is managed creates strong incentives for the most efficient use of spectrum – so that the most valuable users, services and technologies gain access to spectrum quickly."*<sup>109</sup>

- 10.28 Ofcom weakens its own proposals by failing to set out any balanced case of the costs and benefits of intervening to distort the market in favour of state-chosen technology, rather than allowing the market for digital applications to develop freely in response to consumer demand.

## **THERE IS MORE COMPELLING EVIDENCE OF POSSIBLE FUTURE REGULATORY FAILURE THAN MARKET FAILURE**

- 10.29 Ofcom has produced much more compelling evidence of the likelihood of regulatory failure than of any future market failure in the provision of DTT. Where there is evidence of regulatory failure the normal response would be to reduce regulation, not increase it. As Ofcom notes the circumstances surrounding the operation and management of the DTT platform are exceptional, although much credit goes to the Digital TV Group for its role in coordinating the platform and its operators.
- 10.30 The main evidence of market failure on the DTT platform is in the provision of local TV and some other important genres of public service content. Ofcom should reserve capacity for 'market failure' before implementing any future reorganisation of the DTT platform.
- 10.31 There are millions of consumers who have purchased DVB-T equipment who might be expected to prefer to have 10 new free-to-air SD services in DVB-T at DSO (with no hardware upgrade costs) than 3 new HD simulcast services (at considerable cost of upgrading). Ofcom cannot possibly reach a conclusion on a new intervention of such enormous magnitude without conducting meaningful research into consumer and citizen

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<sup>107</sup> *Spectrum Framework Review statement*, Ofcom, June 2005

<sup>108</sup> *Ofcom Comments on draft Orders made for digital radio standards in France*, Ofcom, August 2007

<sup>109</sup> *Digital PSB, Public Service Broadcasting post Digital Switchover*, Ofcom, 27 July 2006

preferences. In particular, given the relatively low social value attributed to HD by citizens in the DDR research, Ofcom has a duty to understand whether the public would prefer Ofcom to use the mode change at DSO to prioritise the provision of enhanced SD plurality.<sup>110</sup>

10.32 Please also see the response to Question 4.

**Question 3: Ofcom is particularly interested in hearing from multiplex operators and programme providers as to whether they are interested in using DVB-T2 and / or MPEG-4, and whether Ofcom should consider permitting their use on DTT?**

10.33 The members of United for Local Television have no interest in providing DTT services which are incompatible with existing “Freeview” branded STBs and IDTV’s already seeded in the UK marketplace.

10.34 This question appears designed to solicit a response in favour of T2. A more balanced question would be to ask aspiring new entrants to the DTT platform which standard they are most interested in using – DVB-T or T2.

10.35 The issues of T2, MPEG4 and HD are all unconnected and should each be the subject of separate cost benefit analysis and public consultation.

10.36 Please also see the response to Question 1.

**Question 4: do you agree that the earliest possible availability and adoption of the technologies is in the interests of consumers and citizens?**

10.37 There are almost no examples in which it is beneficial to be an early-adopter to new technology. There are considerable advantages for consumers – and for society as a whole – to wait to adopt ‘second generation’ technology that has already been researched and developed elsewhere.

10.38 Peter MacAvock, executive director of the DVB project, was quoted by the EE Times (9/8/07) as predicting that the development of T2 consumer products would start in “*early 2010*”. Given the necessity to refine and test reception equipment prior to manufacture it would appear unlikely mass consumer products will become available to the market until 2011 at the earliest.

**OFCOM NEEDS TO LEARN THE LESSONS OF DIGITAL TV HISTORY**

10.39 By 2011, it is conceivable the Freesat platform will be well established providing dozens of HD services on a universal basis. At this time, the attractiveness of 3 or 4 HD services on DTT may be comparable to BSB’s argument in 1990 that “*it’s smart to be square*”. If consumers demand HD, will just 3 or 4 channels really be adequate to satisfy this demand? Ofcom would do well to recall the how the IBA in 1986 licensed the D-MAC satellite service on the basis it offered superior picture quality to PAL. In the ensuing ‘format war’, consumers chose the ‘inferior’ platform from Sky/Astra which launched first, offered greater channel choice and cost less.

10.40 The former BSB headquarters, Marco Polo House, became the home of the ITV Digital (SECA subscription) platform licensed by the ITC. This collapsed six years ago. By now

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<sup>110</sup> Source: *Digital Dividend Review Market Research 2007 Executive Summary*, Ofcom, November 2007

Ofcom might be expected to recognise the dangers in attempting to 'pick' winning applications and technologies.

- 10.41 It is almost impossible for Ofcom to predict the state of the market in 4 or 5 years from now, let alone the 20-30 years the T2 system might be expected to be retained if launched. Any decision to adopt T2 is a significant regulatory move and not one that should be rushed by an impatient regulator.

#### **EARLY ADOPTERS TAKE THE GREATEST RISK FOR THE SMALLEST REWARD**

- 10.42 It is early-adopters who almost always: (i) pay excessive costs; (ii) receive equipment that is sub-optimal; and, (iii) bear the risk of being left with obsolete technology.
- 10.43 Manufacturers are generally interested in developing products for the global market. It is the global success of DTT which most helped reduce the cost of DTT receivers in the UK (from around £400 to around £25). There is no obvious benefit to UK consumers in being a guinea pig for the rest of world in T2.
- 10.44 DVB-T is still only ten years old. Now is not the most obvious time for Ofcom to be introducing new technology on a universal multiplex incompatible with existing reception equipment.

#### **MUCH OF THE VALUE WHICH OFCOM ATTRIBUTES TO T2 COULD BE AT THE EXPENSE OF OTHER PLATFORMS**

- 10.45 It is difficult for Ofcom to accurately estimate how much of the value from the early adoption of T2 detracts from value that might have been attributable to other platforms (e.g. satellite / cable) if the early adoption had not taken place.
- 10.46 Although not necessarily in the interests of consumers, there may sometimes be political or protectionist reasons for adopting new technologies. This is properly a decision for Government.<sup>111</sup>

#### **Question 5: do you agree with Ofcom's view that DVB-T2 MPEG-4 reception equipment could be commercially available in time for DSO in Granada region in late 2009?**

- 10.47 Please see the response to Question 4 which explains why it is inconceivable reception equipment will become commercially available until around 2011.
- 10.48 Further, it is likely to be vastly more costly to acquire one of the first generation of STB's developed for T2 than waiting for variants to the standard to be refined globally and prices of both transmission and reception equipment to fall.

#### **Question 6: do you agree that some form of intervention is required in order for the DTT platform to commence an upgrade to new technologies without delay?**

- 10.49 Ultimately, the market will develop the technology which is most compelling to consumers.

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<sup>111</sup> There may be a political case for allocating and assigning spectrum to the main PSB operators to allow for HD simulcasts (or repeats of programmes already shown in SD). Properly this is a matter for Government rather than Ofcom since the Secretary of State has reserve powers under the CA03 and BBC Royal Charter to require capacity is used for distribution of services by the incumbent PSB operators.

**IT APPEARS UNREASONABLE TO SUGGEST REGULATORY INTERENTION SHOULD BE THE MAIN STIMULUS FOR UPGRADING THE DTT PLATFORM**

- 10.50 The three universal multiplexes are controlled by only three PSB operators (the BBC, Channel 3 and Channel 4), two of which are state owned and the third, Channel 3, owes its existence to a state franchise. Furthermore, ITV plc owns a commercial multiplex in its own right and is also a member of the Freeview consortium.
- 10.51 It is in the interests of those who control the DTT platform (generally the incumbent PSB operators and their transmission service providers) to cooperate to ensure the platform remains attractive.<sup>112</sup>
- 10.52 Whilst some changes to regulation might be desirable, the main stimulus for upgrading the DTT platform should be developments in the market. Ofcom has indicated that future multiplexes in the 'digital dividend' spectrum will not benefit from the comprehensive level of regulatory oversight Ofcom and Government have at present over existing multiplexes. This creates significant uncertainty for both current and future multiplex operators, with two different licensing regimes.
- 10.53 Ofcom has yet carry out meaningful research on whether the public would prefer to have 10 new SD channels (available at no cost with no upgrade to equipment) to 3 HD simulcasts (available only by acquiring new equipment). Ofcom leaves itself exposed to the charge it has failed to carry out this research because it fears the evidence may not support the use of valuable multiplex capacity for HD services already available on Freesat and other platforms.

**Question 7: Do you have any proposals for launching MPEG-4 services on a DTT multiplex using DVB-T in advance of the proposed 2009 timetable and if so can you provide details of how such a service would not undermine the proposed MPEG-4/DVB-T2 launch in 2009?**

- 10.54 United for Local Television suggests Ofcom should consult separately on any proposals to introduce MPEG-4 services using DVB-T.
- 10.55 As a general comment, the development of new services is not necessarily to be feared and Ofcom should not exaggerate the likelihood of consumer confusion. There is considerable evidence many consumers can and do understand the difference between Freeview, Freeview Playback and Top-Up-TV and will manage to understand potential future DTT developments. Ofcom's overall spectrum policy is deliberately intended to allow competing applications and technologies to enter the market in the interests of consumers and citizens.

**Question 8: do you agree with Ofcom's proposed approach for adding SD and HD versions of MPEG-4 and DVB-T2 profiles to the list of permitted standards for DTT in the spring, and that Ofcom's consent must be sought prior to adoption of these standards?**

- 10.56 It is currently impossible for any reasonable person to answer this question sensibly as explained in the responses to Questions 1, 2 and 4.

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<sup>112</sup>It is reported that all of the main analogue broadcasters did sign a non-binding memorandum of understanding regarding the reorganisation of the DTT platform in November 2007.

10.57 It is correct that Ofcom's consent should be obtained prior to the adoption of any new standards so that the regulator can consider proposals in light of its duty to secure a wide range of broadcast services throughout the UK catering for a variety of tastes and interests. Given this duty, it might be desirable if proposals for new standards on the commercial multiplexes be considered more sympathetically than proposals from the universal multiplexes.

**Question 9: do you agree with Ofcom's proposal that Multiplex B should be cleared and upgraded to new technologies?**

10.58 Ofcom's proposal amounts to a fundamental change in the nature and characteristics of the Multiplex B service and a re-allocation of spectrum adopting criteria unrelated to those set out in the BA96. There is an argument that if any multiplex is to upgrade to T2 it should be Multiplex 1 and not any licence awarded by ITC/Ofcom so as not to undermine the original licensing process.

10.59 Further, the proposal made in the consultation document does **not** achieve the maximum potential efficiency gains. Ofcom's independent consultants have advised it to generally seek to group channels with regional 'opt out' variations (for instance for different commercial breaks) on a single multiplex. According to Zetacast:

*"From a purely technical viewpoint, it would be preferable to gather all regional programmes together on a single multiplex, leaving all other multiplexes identical throughout the UK... Although this would represent a good technical solution, the commercial, legal and regulatory impediments to creating a single regional multiplex may well be insuperable."*<sup>113</sup>

10.60 The commercial, legal and regulatory impediments identified by Zetacast are not insurmountable. On the contrary, the purpose of regulatory intervention is to achieve the optimal use of spectrum. If Ofcom is not willing to use its regulatory powers to seek to optimise spectrum use it is failing in a core duty to citizens and consumers.

10.61 As Ofcom itself notes:

*"Through a combination of improved coder design and the use of statistical multiplexing it is now possible to carry between eight and nine SD services in...a multiplex.....Ofcom believes that if all multiplex operators adopted the latest state-of-the-art coding equipment (featuring full use of statistical multiplexing for all video services) and an optimal usage of their capacity it would be possible to carry more television and other services within the existing capacity..."*

**ACTIVELY ENCOURAGING NEW ENTANTS TO THE DVB-T PLATFORM COULD OFFER FAR GREATER TOTAL VALUE TO SOCIETY THAN UPGRADING TO T2**

10.62 The mode change at DSO could allow around 10 new SD video streams to enter the DVB-T platform.

10.63 If Ofcom and Government were to adopt an active competition policy, the current monopoly of the incumbent analogue operators over universal multiplex capacity could be broken up. There would undoubtedly be significant interest from programme makers to access this capacity to supply original new public service content such as:

- children's programming;

<sup>113</sup> Review of DTT HD Capacity Issues – An Independent Report from ZetaCast Ltd Commissioned by Ofcom, Ken McCann, October 2007

- documentaries;
- current affairs;
- arts, drama and cultural programming.

10.64 These new public service networks need not replicate the high cost base of the incumbent PSB operators – many would share resources with existing satellite and cable channels. It is likely many niche channels, from the UK and elsewhere, would be keen to become free-to-air services on the DTT platform, showcasing new content from the UK and around the world. This could potentially offer far greater value to society than 3 or 4 HD simulcasts.

### **BENEFITS OF ENCOURAGING NEW ENTRANTS ON DTT**

10.65 Encouraging a diverse range of new SD services on the universal multiplexes could be seen achieve a number of public policy objectives:

- enhancing broadcasting plurality post-DSO, in line with Ofcom's statutory duty to secure a wide range of universal television services catering for a variety of tastes and interests;
- breaking-up the existing 'cartel' which artificially limits choice for viewers and advertisers, enabling DTT to compete far more effectively with satellite and cable platforms, thereby narrowing the 'digital divide';
- maximising value from any future 'direct funding' arrangements – allowing genuine contestability between universal service providers rather than just a 'coronation' of the three incumbent commercial operators;
- being consistent with Ofcom's research which shows high quality new SD services are one of the two most demanded new applications (alongside local TV);
- enhancing the market for multiplex capacity, providing new services using DVB-T technology which is tried and tested universally and likely to enjoy a new universal reach in the UK post-DSO;
- maximising total value to society.

### **UNITED FOR LOCAL TELEVISION – ALTERNATIVE DTT RE-ORGANISATION PROPOSAL**

10.66 United for Local Television would suggest a more radical reorganisation of the three universal multiplexes than that suggested by Ofcom, as set out in the table below.

Multiplex	Current Operator	United for Local Television Proposal	Government / Ofcom action required (following due consultation)
1 (PSB1)	BBC	Cleared of existing services to enable new services subject to full consultation and impact assessment. Capacity re-assigned using comparative selection process. For instance, could be used by incumbent PSB operators for T2 or to allow 10 new SD entrants to the DVB-T platform (the latter may require new legislation).	Secretary of State determines use under Section 42 of BBC Charter.  The Government may wish to consider amending legislation to move regulatory control of this multiplex from the BBC Trust to Ofcom.
B (PSB3)	BBC Free to View	Remains DVB-T MPEG-2 multiplex. Minimum of 7-8 video streams plus non-TV services (mainly audio). Ofcom amends licence terms to ensure capacity is reserved for BBC1 (15 variants), BBC 2 (4 variants), Channel 3 (28 variants), Channel 4 (6 variants), Five (4 variants) and "Channel 6" (circa 50 add/drop variants) on UK-wide basis plus S4C/GDS/TG4 in Wales/Scotland and NI respectively. Services to be free-to-air SD.  Multiplex B to carry all 5 'core' PSB services in SD. To maximise opportunities for full statistical multiplexing on the remainder of the DTT platform, seek to move as many audio services as possible to this 'regionalised' multiplex following full review of current high bit-rates.	Secretary of State makes Order under Section 244 of Communications Act 2003 and amends Independent Analogue Broadcasters (Reservation of Digital Capacity) Order 1996.  Ofcom implements assignment process for independent Channel 6 franchises.  Application of "must carry" status for "Channel 6" licensees on cable systems by order of Secretary of State.
2 (PSB2)	Digital 3 & 4 (Channel 3 licensees and Channel 4 Television Corporation)	Remains DVB-T MPEG-2 multiplex. 9-10 video streams plus non-TV services (mainly text). Capacity re-assigned using comparative selection process. Licence condition to carry core services 'displaced' from Multiplex 1 not carried on Multiplex B, BBCi/Teletext and other 'quasi-PSB' services deemed essential by Ofcom (this could include additional services nominated by Channel 3, Channel 4 and/or Five).  In all likelihood, the vast majority of existing ITV plc and Channel 4 Television operated services could continue to be housed on this multiplex should Ofcom wish to facilitate this.  Further new 'public service' channels (e.g. for children) could also access this capacity if desired by Parliament.	Ofcom to use comparative selection to re-assign capacity.  Services deemed by Ofcom to be important to the fulfilment of PSB purposes to be granted "must carry" status as licence condition. This to include core BBC services not carried by Multiplex B. Capacity could be reserved for other PSB operators. Note Channel 6 could also be carried on this multiplex as licence condition if capacity not available on Multiplex B.  Review Teletext licence conditions to require all universal multiplex services including Channel 6 licensees receive full programme listings.

10.67 The above proposals achieve Ofcom's objective to 'free up' a whole multiplex. At the same time, the proposal has several advantages over that set out in the consultation document:

- Capacity is reserved for a new Channel 6 network, enhancing public service plurality pre-DSO.

- Capacity on Multiplex 2 is re-assigned by comparative selection, allowing for potential innovative new entrants. Even if ultimately re-assigned to incumbent PSB operators, new 'public service' conditions could be agreed as part of the process. It would be necessary for all PSB operators to justify their use of all DTT capacity, including the BBC's use of video streams for little-used 'red button' services.<sup>114</sup>
- Most importantly, the universal DTT platform is re-organised to maximise efficiency. All SD services with semi-regionalised programming and advertising content are moved to a single multiplex. This allows for the maximum use of statistical multiplexing on all other DVB-T multiplexes. As a result, the 'loss' of any existing video streams is minimised. Cost-efficiency is also maximised as the services with regional inserts only need to be managed by one multiplex provider.<sup>115</sup>
- The incumbent analogue "PSB" services are grouped together on a single multiplex (i.e. the 5 London-based networks and S4C in Wales). This allows bit-rates to be protected and therefore picture quality to be enhanced to a greater degree than Ofcom's proposed reorganisation.
- Bitrates of audio services would be subject to full Ofcom review – current rates would appear to be an abuse of capacity. As Ofcom is aware, gifted assignments have the potential to distort the market and incentives to use spectrum efficiently. This would appear to be the case with audio services which broadcast using bitrates in excess of those used for equivalent DAB radio services.
- In the longer term, Multiplex 2 could be converted to T2 (or some other technology) without impacting any of the 'core' PSB services which would remain on Multiplex B. The consultation document says it does not expect two of the universal multiplexes to convert to T2 "*for the foreseeable future*". This leaves open the possibility of this happening. The logical conclusion of Ofcom's policy is that one day this will be desirable. Given that Ofcom cannot predict the future with certainty, it would be prudent to place the incumbent analogue PSB services on the same multiplex. This would facilitate any future phased switch-off of the DVB-T platform over the course of a lifetime. This proposal is therefore more 'future proof' as well as more technically efficient than Ofcom's.
- Multiplex B remains a DVB-T multiplex under the regulatory control of Ofcom, leaving Multiplex 1 to be cleared for new services such as T2, should a political decision be taken to support this technology. This is advantageous as it provides Ofcom with full control over all multiplexes carrying DVB-T services and enables it to control when (if any) of these multiplexes move to adopt new standards and/or other relevant changes to licence conditions.<sup>116</sup>
- In the longer term, there could be a partial move towards more spectrally-efficient use of single frequency networks without necessarily impacting on Multiplex B as a multi-frequency network allowing for regional variations.

<sup>114</sup> New firm licence conditions would contrast to the current situation where non-PSB channels on the universal multiplexes could change overnight without any requirement for public consultation or a new open selection process.

<sup>115</sup> It is assumed S4C2 in Wales remains on Multiplex A (in which S4C was originally a shareholder) which is not a universal multiplex. As this service does not broadcast after 6pm on weekdays it may not be considered essential from an efficiency perspective to move it to Multiplex 2. This would not prevent S4C2 extending its hours in the future subject to agreement and a partial loss of spectral efficiency.

<sup>116</sup> For example, subject to Ofcom approval, Multiplex 2 could reduce its coverage from 98.5 per cent at a future date without any impact on core 'PSB' services (i.e. the two BBC controlled multiplexes would continue to provide universal coverage for the incumbent analogue channels). However although this would be vastly more spectrally efficient (potentially enabling a new DTT multiplex to launch with 90 per cent reach) it may not meet the public policy objectives of Ofcom and Government.

- This proposal is in line with the recommendations made by DCMS consultants who suggested back in 1998: *“It is therefore appropriate to look at ways of delivering the basic qualifying services channels to the fringe community. If this were done by DTT, then the most spectrum efficient way to do this would be if the five qualifying services were combined into a single multiplex.”*<sup>117</sup>

10.68 Realistically, Ofcom will only have the chance to re-organise the DTT platform once. It would be shameful to get it wrong when the potential efficiency gains are so immense. It is highly unreasonable for the consumer to be denied services due to a sub-optimal use of multiplex capacity, simply because Ofcom wants to avoid the short-term inconvenience to PSB operators of renegotiating contracts amongst themselves. Since these contract negotiations are an inevitable part of any reorganisation process, there is no excuse for Ofcom not implementing the optimal service configuration.

10.69 No existing service provider should suffer a significant financial disadvantage due to the proposed re-organisation of the DTT multiplexes. This may require Ofcom and Government to agree, for example, that pricing of capacity should relate to actual costs incurred by multiplex operators rather than market rates, or exclude the cost of relay transmitters not used by commercial multiplexes (which, as a non-commercial proposition, should rightly be paid for by the licence fee).

#### **RE-ADVERTISEMENT MUST REMAIN AN OPTION**

10.70 Ofcom would be within its rights to revoke and re-advertise the Multiplex B licence. Ofcom’s primary duty is to secure the optimal use of spectrum and the BBC has proven demonstrably unable to achieve this objective as a multiplex operator – squandering valuable capacity with inefficient coding whilst refusing to open up its multiplex to new services. This is an insult to all citizens who have invested in DTT reception equipment.

10.71 United for Local Television suggests re-advertisement of the Multiplex B licence must remain a ‘last resort’ if this proves the most effective manner to open up the universal multiplexes to new entrants and meet the public demand for new services.

10.72 Please also see the response to Question 12 and 22 below.

#### **Question 10: do you agree with Ofcom’s proposal that all multiplexes should be required to upgrade to 64QAM at DSO in order to make the most efficient use of spectrum (ie that the mode change should not merely be optional)?**

10.73 United for Local Television supports this proposal. It is vital Ofcom seek to enhance the market for multiplex capacity which is highly inelastic. Ofcom should consider further investigation and intervention to ensure any additional capacity that becomes available from mode change is assigned in a manner which promotes competition and allows new high-quality entrants to the DTT platform.

#### **Question 11: do you agree with our proposals for accommodating Five, S4C, TG4 and GDS on Multiplex 2?**

10.74 Please see the response to Question 9 above.

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<sup>117</sup> Source: *A Study to Estimate the Economic Impact of Government Policies Towards Digital Television*, DCMS, January 1998

- 10.75 Ofcom currently proposes that in Wales, Scotland and NI Multiplex 2 is required to reserve capacity for S4C, GDS and TG4 (Teilifís na Gaeilge) respectively.<sup>118</sup> These channels have 'reserved' access to the DTT platform precisely because there is a concern they may not be able to secure carriage in an open market – the same concern applies to local TV services.
- 10.76 United for Local Television is, in principle, supportive of proposals to secure universal capacity for non-PSB services where it is considered these contribute to the achievement of public purposes.

**Question 12: do you agree with our assessment that nine SD services can operate on Multiplex 2? If not, do you have an alternative proposal?**

- 10.77 Ofcom's independent research would suggest that its 'central case' proposal is unduly pessimistic.<sup>119</sup> Further, it is not unreasonable to expect non-PSB services to reduce their bit rates to accommodate new incremental channels in this capacity. This would help meet audience demand for additional SD services.

**THERE IS MINIMAL EVIDENCE OF PUBLIC DEMAND FOR 'RED BUTTON' SERVICES**

- 10.78 United for Local Television notes there is an extent to which the BBC has introduced interactive video streams ('red button' video services) on DTT in order to use the capacity available to it – rather than in response to clear evidence of audience demand.
- 10.79 In general, the use of DTT capacity to provide a stream of 'looped' video services accessible on-demand is wasteful. This is highly-scarce capacity primarily intended to be used for linear TV services. Other platforms (such as the internet) are better suited to quasi video on demand services. It is noteworthy that no other broadcasters waste valuable multiplex capacity quite so flagrantly on little-used services.<sup>120</sup>
- 10.80 In the absence of clear evidence of audience demand it would be reasonable to take one, two or all three of the interactive video streams from the BBC to facilitate the roll-out of local TV across the UK. At least one of these video streams could also be used to enable Channel 6 to launch on the Freeview platform pre-DSO. It might be considered equitable that, since Ofcom proposes that Channel 3 and Channel 4 each move a video stream in order to 'clear' a universal multiplex, the BBC should also be willing to move one of its own video streams.<sup>121</sup>

**INCUMBENT OPERATORS ARE SUFFOCATING NEW SERVICES**

- 10.81 It is important to examine the manner in which DTT capacity is used by all PSB operators. As technology has developed, these broadcasters have taken the opportunity to launch new repeat-based and time-shift channels rather than releasing capacity to the market to determine the highest value application. It is questionable to what extent these services make a significant contribution towards key 'PSB' purposes since they do not tend to enhance regional production, or diversity of voice.

<sup>118</sup> In January 2008 the BBC Trust approved the BBC's involvement in a new GDS (Gaelic Digital Service) subject to a further public value test before it is assigned Freeview capacity in Scotland (source: BBC Trust Press Release 28/01/08).

<sup>119</sup> *Review of DTT HD Capacity Issues – An Independent Report from ZetaCast Ltd Commissioned by Ofcom*, Ken McCann, October 2007

<sup>120</sup> Once a year the BBC uses these video streams to provide Wimbledon TV. It could be argued that sporting video streams are, in reality, 'backdoor' TV services which have not been through the proper procedure of a market impact assessment and public value test.

<sup>121</sup> Until Channel 6 is ready to launch on a region-by-region basis the BBC should be required to make capacity equivalent to one video stream available for The Community Channel and Teachers TV in peak-times, but could continue to provide a 'red button' service at other times.

10.82 Ofcom and Government may ultimately conclude non-core services seek to acquire commercial multiplex capacity if they wish to continue broadcasting, in order to make way for new entrants to the universal multiplexes.

10.83 Please also see the response to Question 16 below.

**Question 13: do you agree with our proposals for the reorganisation process for the existing multiplex services set out in the central case scenario?**

10.84 Please see the responses to Questions 9 and 12 above.

**Question 14: do you agree with the principles / conditions that Ofcom proposes to use to evaluate counterproposals for the reorganisation process?**

10.85 Ofcom proposes to give any one incumbent PSB operator a veto over the entire process of the re-organisation of the DTT platform. This is not justified and it is noteworthy Ofcom has conducted no impact assessment of this extraordinary proposal. It is quite obvious that, given such a veto, self-interested programme providers might well use it to subvert the public interest and prevent new entrants from emerging on the universal multiplexes.

10.86 The sole criteria by which Ofcom should evaluate all counterproposals for the reorganisation of the DTT platform are the fulfilment of its statutory duties. The consideration of any other criteria would be ultra vires.

10.87 If Ofcom fails to use the opportunity of the DTT re-organisation to reserve a video stream for Channel 6, it is likely to be much more difficult to gain the consent of broadcasters to sacrifice capacity for this new network at a later date. Service providers who have invested in providing new channels would not welcome a regulator taking this capacity off them. The expectation that the regulator intends to use DSO to allow at least one new entrant to the universal multiplexes should be an integral part of any future reorganisation process.<sup>122</sup>

**Question 15: Do you have an alternative proposal for the reorganisation process? If yes, please provide details.**

10.88 Please see the responses to Questions 9 and 12 above.

**Question 16: do you agree with Ofcom's assessment of the options for allocating the upgraded capacity?**

10.89 Ofcom proposes to re-assign the capacity it is 'clearing' using a beauty parade in which only incumbent PSB operators will be invited to participate. This mechanism undermines the very purpose of a competitive award process – the existence of any competition. There will be no competitive pressure on the incumbent PSB operators to renew their 'public service' commitments when they know they will not have to face any competition from new entrants.

10.90 Ofcom's proposal is little different from holding an election in a one party state. The selection process would rightly be seen as a sham.

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<sup>122</sup> The Secretary of State has the power to specify modifications to sections 7 to 16 and sections 18 and 19 of the BA96. It is conceivable that, in the absence of agreement from multiplex operators to allow a new entrant to access capacity, the Secretary of State may need to introduce an order giving Ofcom greater freedom to impose new conditions on multiplex licences.

- 10.91 Ofcom has not conducted any impact assessment on its proposal to shut the door on new entrants to the universal multiplexes.

**WHEN MAJOR GLOBAL BROADCASTERS CANNOT GAIN ACCESS TO PRIME TIME DTT CAPACITY IN THE UK, THIS REPRESENTS A SERIOUS ISSUE WHICH OFCOM SHOULD BE ADDRESSING**

- 10.92 It should be a cause of serious concern to Ofcom that a major global broadcaster has publicly protested it is impossible to acquire prime time capacity on the DTT platform.

- 10.93 John Hardie, Walt Disney TV's executive VP and managing director in Europe, the Middle East and Africa told *Broadcast* that the ABC1's:

*"...inability to get access to a Freeview primetime spectrum" contributed to the decision "that it was best to move on" by closing the service.*

**OFCOM MUST RESEVE UNIVERSAL CAPACITY FOR NEW ENTRANTS**

- 10.94 Reserving capacity on a universal multiplex would allow for a 'national debate' about the best use for this capacity be it local news, original UK children's programming or other under-provision such as education, arts, cultural or religious programming. The existing monopoly of the incumbent PSB operators would be broken, enhancing plurality of broadcast voices, an essential feature of any modern liberal democracy.

- 10.95 In the unlikely event that, following consultation, Ofcom and Government do not consider there is a public benefit in launching new public service networks then this capacity could be re-assigned to an incumbent PSB operator (with or without new content conditions).

- 10.96 Please also see the responses to Questions 9 and 12 above.

**Question 17: do you agree with the proposal that HD broadcasting on the DTT platform should use the more efficient progressive format, rather than the interlaced format?**

- 10.97 The format Ofcom is proposing is non-standard and is not classified as 'high definition' by the global broadcasting industry. This exposes the potential inefficiency of using DTT capacity for what Ofcom misleadingly refers to as 'HD'.

**Question 18: do you agree with the proposal that Ofcom should not mandate the use of the capacity for any particular service type (SD or HD) but allow the broadcasters to make proposals?**

- 10.98 United for Local Television believes it is important that the demand for the most popular new application (local TV on Freeview) is satisfied before any capacity is assigned to less popular applications such as HD.

- 10.99 Leaving a decision on the use of capacity to broadcasters highly unlikely to lead to optimal use. This is because incumbent broadcasters have a vested interest in shutting-out new entrants to the platform who might impact on their existing market share. Ofcom should not make any recommendation on the use of capacity for either SD or HD without following its own due process (research, analysis, impact assessment and consultation).

- 10.100 Please also see the responses to Question 1, 2 and 16 above.

**Question 19: do you agree with the proposal that the capacity should be allocated in three UK-wide blocks initially, rising to four blocks at DSO?**

10.101 United for Local Television does not express an opinion on this question, except to note that Ofcom is in practice proposing the packaging option most suited to HD, the new DTT service for which there is least evidence of citizen value. It is difficult to see how Ofcom can reach any decision on this issue in the absence of any research, impact assessment or consultation relating to the costs and benefits of SD versus HD.

**Question 20: do you agree with the proposed criteria for the comparative selection process?**

10.102 It is difficult to see how Ofcom will manage to reach any objective and transparent outcome using criteria that are so wide and subjective. The suspicion must be that Ofcom is proposing criteria intended to favour the delivery of HD, the new DTT service for which there is least evidence of citizen value.

10.103 Ofcom's duty is to research and consult on what new content (whether SD or HD) is most compelling to the public. Rushing such a vital assignment decision without allowing time for any meaningful new research would appear to be unjustified.

**CONSUMER PROTECTION ISSUES – CORE TO ASSIGNMENT CRITERIA**

10.104 Ofcom and broadcasters may be keen to market HD on T2 rather than SD on DVB-T. However, the main priority must be the development of DVB-T. If and when proceeding with its proposals, Ofcom must put in place strict licence conditions which prevent T2 being pushed to consumers to the detriment of the DVB-T platform. There is a potential risk that sales staff will resort to 'scare tactics' to persuade vulnerable consumers to purchase 'future proof' T2 equipment that they do not need and can ill afford. Protection of vulnerable consumers must be top of Ofcom's priorities in all DSO related policy making and not just an after-thought.

10.105 Please also see the responses to Questions 18 and 19 above.

**Question 21: do you have any comments on Ofcom's proposals for the upgraded multiplex?**

10.106 United for Local Television has no comments that are not made elsewhere in this submission.

**Question 22: Do you agree with Ofcom's impact assessment?**

10.107 The consultation document is the first and only consultation that Ofcom has ever conducted on T2. It is universally acknowledged that Ofcom is consulting on introducing T2 not in response to evidence of any public demand but, rather, in response to the self-interested desire of incumbent PSB operators to use gifted capacity assignments to provide HD.

10.108 Ofcom has never conducted a single consultation on allocating universal capacity to HD rather than SD. The impact assessment in the consultation document deliberately avoids serious analysis of this fundamental issue, focusing instead upon T2 / MPEG-4. **As such, the impact assessment upon which Ofcom is now consulting is not fit for purpose.** Ofcom has a statutory duty to only intervene in the market to support the introduction of new technologies after conducting a full and thorough public consultation process.

**10.109 United for Local Television believes the Impact Assessment set out in the consultation document has failed to give proper and due consideration to:**

- the extent to which consumers and citizens are likely to demand 10 new SD services on DVB-T (available with no new equipment) to 3 HD simulcasts or other services using T2 (available at considerable expense);
- the extent to which consumers and citizens are likely to object to the cost and inconvenience of acquiring new equipment to continue to receive a full complement of services once commercial multiplexes have upgraded to T2 (which is the main purpose of the proposed intervention offered by Ofcom);
- the lack of evidence that HD is an optimal use of universal multiplex capacity, regardless of the views of self-interested broadcasters and/or retailers & manufacturers;
- the likelihood that the demand for HD can be better met by other platforms (such as Freesat);
- the extent to which, even if a universal multiplex were to be upgraded to T2, the most value to consumers and citizens would be gained from 19-20 new SD video streams provided by new DTT entrants;
- the benefits of a more radical reorganisation of the three universal multiplexes in order to maximise technical efficiency;
- the benefits of assigning multiplex capacity through a fair, transparent, selection process open to new entrants;
- the benefits of restricting the total proportion of multiplex capacity that can be used by any one body;
- the questionable public value of a number of existing services carried on the universal multiplexes (including 'red button' services);
- the opportunity cost and unintended consequences of the proposed intervention, including the denial of a more free and open market in DVB-T multiplex capacity;
- the benefits of allowing technology to be developed freely by the market so that the UK does not stand alone adopting its own standards;
- the risk retailers may take advantage of vulnerable consumers by seeking to sell them 'future proof' T2 reception equipment they do not require – with the support of heavy marketing campaigns by the incumbent PSB operators;
- the limited ability for the public (including representatives of the nations and regions) to comment over the Christmas consultation period or, subsequently, during a brief assessment process of applications which Ofcom proposes should last as little as 2 months;
- the extent to which gifting universal multiplex capacity exclusively to PSB operators risks distorting incentives where there may be more appropriate platforms for them to use for incremental services such as HD (for instance, a more efficient use of spectrum would be to establish a single frequency network or use out-of-group interleaved frequencies);
- the benefits of completing the PSB review before re-assigning any universal multiplex capacity for any purpose;
- the widespread level of satisfaction with existing SD picture quality where adequate bitrates are used (and the extent to which SD pictures are capable of being upscaled to a good standard by many modern HD Ready sets);

- the extent to which the very largest screen sizes (i.e. those who have the most to gain from HD) might be considered 'luxury goods' rather than essential beneficiaries of core public service spectrum;
- the requests from the devolved administrations not to assign spectrum in a manner that could inhibit new public service channels for and from the nations;
- the opposition to intervention for HD expressed by the House of Commons Culture, Media and Sport committee;
- the extent to which T2 is an untried and untested technology which it is not yet clear any other countries intend to adopt;
- the inflexibility to be able to withdraw services once a regulatory decision has been taken to upgrade, no matter if the market develops other more popular technologies and services available at lower cost;
- the statutory duty to seek a wide variety of television channels throughout the UK and the duty to secure the optimal use of spectrum.

10.110 Ofcom has a moral and legal duty to give full and thorough consideration to the merits of reserving capacity for new channels dedicated to delivering original public service content. This might include new SD channels dedicated to children, the arts, health, education and community development, as well as local news and production.

10.111 Overall, Ofcom's Impact Assessment can be seen to be superficial, inadequate and discriminatory in favour of incumbent broadcasters. Far from providing certainty to the market, a rash decision to upgrade to T2/HD without full and thorough consultation could be subject to ongoing uncertainty should Ofcom's procedural failure be subjected to a judicial review process.

**Question 23: Do you agree with Ofcom's assessment of the potential benefits, risks and mitigations strategies relating to the impact of these proposals on the DSO programme?**

10.112 A significant proportion of the UK population have still not yet converted to multi-channel television. It is a fair assumption that these are generally people satisfied with standard sized CRT sets and not in a rush to acquire 42 inch plasma screens. Ofcom's proposals offer nothing to excite those who are most sceptical, or even frightened or stressed, about digital technology.

**OFCOM'S PROPOSALS OFFER NO ATTRACTIVE CONTENT TO LATE CONVERTERS**

10.113 The DSO process will not be assisted in the slightest by Ofcom's proposals. Those who are late converters or 'refuseniks' to digital technology are typically those who are least interested in HD. These analogue viewers generally see DSO as an expensive inconvenience for which they will receive no obvious benefit.

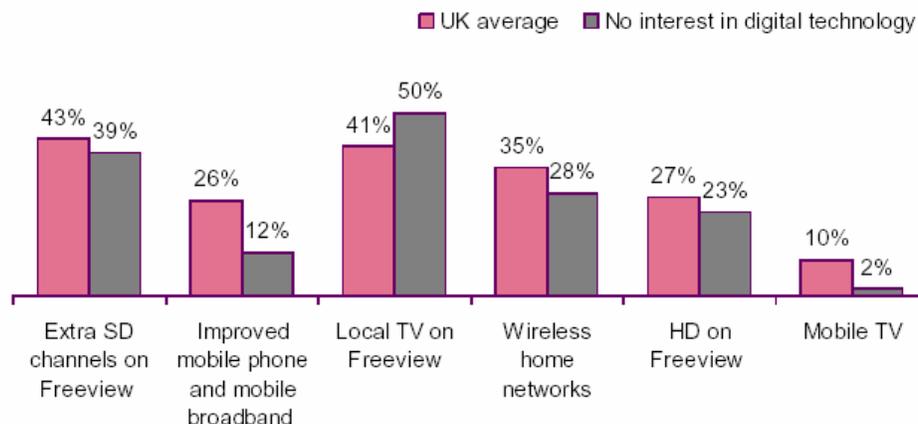
10.114 If Ofcom is concerned to ensure that the needy and the vulnerable benefit from DSO, it would be putting forward constructive proposals that guarantee local TV on DTT. There are already a plethora of platforms available for those who demand HD content, including Freesat with universal coverage. There are no platforms available for those who demand free-to-air local TV channels.

## A POSITIVE INCENTIVE TO SWITCH OVER

- 10.115 The smooth implementation of DSO requires a positive incentive for every person in the UK to convert all of their sets to digital as soon as possible. Many fear digital TV will simply be trash, subscription channels, repeats or more of the same. It is telling that many households have, so far, chosen not to upgrade their secondary sets to digital.
- 10.116 Many thousands of people would be positively enthused to switchover to digital to receive a local TV channel. Seeing their street, their family, their representatives, local people and places – this is the excitement a local TV channel can bring.
- 10.117 Ofcom has it within its power to take positive action to encourage digital take-up amongst those who are most sceptical about DSO. Ofcom is in possession of research which shows those who are most concerned about digital technology are also most enthusiastic about local TV. The additional of a local channel to the DTT platform, in ever part of the UK, would have a far greater impact on people’s lives and on the smooth implementation of DSO than any of the proposals set out in the consultation document.

## A FEAR THAT FUTURE CHOICE WILL BE RESTRICTED

- 10.118 The implication of Ofcom’s proposal is that, in the foreseeable future, the majority of existing DTT multiplexes will not continue to broadcast using DVB-T. This is likely to cause considerable concern to many consumers who have acquired new reception equipment (often including new aerials and boosters as well as STBs/IDTVs and/or PVRs) in order to receive the existing six Freeview multiplexes.
- 10.119 Those who have not yet converted to DVB-T (including those entitled to special assistance) are likely to be extremely concerned that the equipment they are purchasing may not continue to support a full complement of current SD services. Ofcom’s proposals must not be rushed and must include research to consider the potential damage to the DSO process caused by perpetuating confusion and alienating households.



Source: Ipsos MORI survey 2007 UK Base: 1,049, no interest in technology: 217

## **Section 11 – Conclusion**

### **TIME FOR A DEBATE ACROSS THE NATIONS AND REGIONS ON A NEW DEVOLVED PUBLIC SERVICE NETWORK**

- 11.1 There is no ‘divine right’ for the incumbent PSB operators to dominate the DTT platform post-DSO. Ofcom has a duty to consult properly on the best use of universal multiplex capacity. It is vital the UK’s nations and regions (including representatives of the devolved administrations) are encouraged to participate in an extensive debate. Ofcom must not take irrevocable decisions on the assignment of any DTT multiplex capacity before its review of PSB is completed.

#### **PSB CHANNEL 6 – TIME FOR A DEBATE ACROSS THE NATIONS AND REGIONS**

- 11.2 Ofcom’s DDR research showed the most popular new DTT services are:<sup>123</sup>
- (i) new high quality PSB channels in SD on Freeview; and
  - (ii) local TV on Freeview.
- 11.3 Channel 6 would deliver all of the criteria demanded by the public – combining high quality networked public service content with local content for at least 50 sub-regions of the UK.
- 11.4 There is no good reason why Channel 6, with guaranteed access to all DTT transmitter sites, would not form a successful and profitable network of independent, regionally based, public service operators. The real question is whether Channel 6 will be allowed to launch, or whether Ofcom will choose to grant a handful of incumbent PSB operators an effective monopoly over all available universal multiplex capacity.

#### **THE CONSULTATION DOCUMENT IS NOT FIT FOR PURPOSE**

- 11.5 Ofcom proposes to adopt a policy of ‘command and control’ to assign capacity in a manner deliberately designed to discriminate against new entrants to the DTT platform. This proposal has been subjected to no public research, no cost benefit analysis, no meaningful impact assessment and no extensive consultation process.
- 11.6 If Ofcom were to rashly proceed with its current proposals, it would represent gross negligence, a dereliction of its statutory duties and the maladministration of spectrum resource intended for the development of public service television.
- 11.7 It is unacceptable for Ofcom to propose to distort the market by discriminating in favour of incumbents and against new entrants without first undertaking comprehensive consultation on the merits of allowing new public service networks to develop.

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<sup>123</sup> *Digital Dividend Review Market Research 2007 Executive Summary*, Ofcom, November 2007

## **OFCOM'S APPROACH TO PSB IS EXTRAORDINARILY INEPT**

- 11.8 T2 is unknown technology which will not become commercially available until around 2011. In light of this delay, Ofcom should take the opportunity to secure the future institutional arrangements for public service television before re-assigning universal multiplex capacity worth multi-millions.

## **OFCOM SHOULD REFRAIN FROM REACHING POLICY CONCLUSIONS BEFORE IT HAS GATHERED SUFFICIENT EVIDENCE TO DO SO**

- 11.9 Ofcom states:

*“At present, the evidence is insufficient to conclude that more PSB DTT services are necessarily the best way to achieve the goals of maintaining and strengthening the quality of PSB in future.”<sup>124</sup>*

- 11.10 If the evidence is insufficient, this is only because Ofcom has made no effort to gather any evidence from any source. Ofcom is aware of the high level of public demand for more public service DTT channels and for local TV on Freeview – the two services most demanded by consumers in its DDR research.
- 11.11 If Ofcom does not feel it has sufficient evidence to reach a policy conclusion then it should refrain from doing so. It should seek to gather further evidence and to consult widely. It is unacceptable for the regulator to rule out enabling a new ‘sixth’ public service network to enter the universal DTT platform without even consulting on the subject.
- 11.12 UK citizens must not be excluded from the benefits of new DTT services focused on local communities simply because Ofcom does not wish to make the effort to gather some evidence.

## **THE DDR WILL NOT FACILITATE LOCAL TV**

- 11.13 The failure, to date, of the UK to develop a viable local TV network represents an abject failure of policy – a failure Ofcom’s approach is only perpetuating.

## **THE OFCOM BOARD ARE BURYING THEIR HEADS IN THE SAND**

- 11.14 Ofcom has not once conducted a single comprehensive consultation on the future prospects for local TV, despite it being the most demanded new application in DDR research.
- 11.15 Ofcom has simply washed its hands of its duties to citizens – arguing the internet (a platform of which almost a third of citizens has never used) is most suitable for local TV, despite producing no business case to support this assertion. Ofcom’s proposals for the development of local TV in the UK are ill considered and derisory, based on flawed analysis.
- 11.16 No country anywhere in the democratic world argues that the only way local broadcasters should be able to gain access to spectrum is to out-bid national broadcasters. If Ofcom were to apply this principle in the UK the entire local radio sector would close down overnight, as would ITV1 regional output and S4C.

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<sup>124</sup> *Digital Dividend Review – A statement on our approach to awarding the digital dividend*, Ofcom, December 2007

## **THERE WILL BE EVEN LESS OPPORUNITIES FOR LOCAL TV IN THE FUTURE THAN UNDER THE RSL REGIME**

- 11.17 Parliament has expressed a clear desire to see local TV be developed. The RSL regime was introduced in the BA96 with the deliberate intention of developing local TV and this legislation has never been repealed.
- 11.18 The handful of remaining RSLs reflect a multi-million pound investment, primarily made by the private sector, in seeking to deliver a new tier of local public service broadcasting. In recent years this investment was continued on the understanding the Government would make provision for a new tier of local TV on DTT.
- 11.19 Today, existing RSLs are under threat of closure. Even short-duration RSLs appear unlikely to be available post-DSO. The result of the DDR decisions made by Ofcom will be even less opportunities for local TV than under the RSL regime.
- 11.20 In effect, Ofcom's policy is that existing RSLs should be forced to close to allow more lucrative US shopping channels to enter the terrestrial platform. If this is not an example of market failure, what is?<sup>125</sup>

## **IN THE FUTURE THERE MAY BE ONLY TWO DVB-T MULTIPLEXES COMPATIBLE WITH EXISTING FREEVIEW STB'S AND IDTV'S**

- 11.21 Ofcom has said that it is willing to consider proposals from the three existing commercial multiplexes to upgrade to T2.
- 11.22 Under Ofcom's proposal, it is possible that eventually there will be only two DVB-T multiplexes operating in the UK. Ofcom has said it expects two of the three universal multiplexes to continue to use DVB-T for the "*foreseeable future*" – a statement which leaves open the possibility that at least one of these multiplexes will eventually upgrade to T2.
- 11.23 If Ofcom's promotion of T2 is successful, there could be a significant reduction in capacity available for DVB-T in the coming years. This could have a detrimental impact on a very significant proportion of citizens who do not have the money and/or inclination to throw out their existing DVB-T reception equipment.

## **OFCOM'S PROPOSALS WILL ULTIMATELY LEAVE ONLY TWO DTT MULIPLEXES BROADCASTING IN DVB-T, WITH ALL CAPACITY MONOPOLISED BY INCUMBENT OPERATORS**

- 11.24 In a scenario in which only two multiplexes use DVB-T, it would be shocking if all mainstream English-language capacity on these multiplexes was monopolised by the same broadcasters who monopolised all analogue spectrum. This would mean no new mainstream competition on the DVB-T platform, even for the majority of viewers who point their aerials at main station sites.

## **CONSULTATION ON CHANNEL 6 SHOULD START NOW**

- 11.25 United for Local Television appeals to Ofcom to properly consider the case for:

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<sup>125</sup> It should be formally recorded that the CEO of Ofcom has refused the request for a direct personal meeting with United for Local Television – a snub to existing licensed RSLs and their viewers.

- ‘must carry’ status for Channel 6 on a universal multiplex forming a viable UK-wide network of local TV services; and
- ‘must carry’ status for ‘ultra local’ TV on any DVB-T multiplexes that emerge in the interleaved spectrum.

11.26 Further analysis and consultation on Channel 6 need not await the conclusion of Ofcom’s PSB review. Whilst detail regarding a licensing regime could be subject to further research, a dedicated consultation on underlying principles could be launched by Ofcom almost immediately, using the summary of options set out in Annex 7 as a basis for the questions. In parallel, the DCMS could complete its work on drafting a Local Television Order.

### **THE PROPOSED RE-ORGANISATION REPRESENTS A DERELICTION OF OFCOM’S STATUTORY DUTIES**

11.27 To gift all universal multiplex capacity to the five analogue broadcasters fails almost all of Ofcom’s duties – it is non-transparent, unaccountable, disproportionate, inconsistent, untargeted and will not lead to optimal spectrum use.

11.28 If the outcome of Ofcom’s proposals is the launch of a service of little value to citizens (HD), instead of a service highly valued by citizens (local TV), this will represent a significant regulatory failure.

11.29 United for Local Television trusts Ofcom will act properly and in the public interest, and not just the narrow interest of incumbent PSB operators, if and when implementing any future reorganisation of the DTT platform.

### **OFCOM’S PROPOSALS ARE INCONSISTENT WITH THE GOALS OF GOVERNMENT**

11.30 Former Culture Secretary, James Purnell, told the Oxford Media Convention that the Government’s three goals for broadcasting are:<sup>126</sup>

- (i) *“an open market”*
- (ii) *“the very best broadcasting should be open to everyone”* and
- (iii) *“consumers should be in charge”*

11.31 Ofcom’s proposals for the universal multiplexes manage to breach all three goals of Government delivering:

- (i) a closed market;
- (ii) the denial of the new high-quality services most demanded by consumers (local TV and new SD entrants);
- (iii) the restriction of consumer choice.

11.32 It would be perverse for Ofcom and Government to reserve capacity on a universal multiplex for a handful of commercial operators with diminished commitments to public service, but refuse to reserve capacity to meet the proven and demonstrable market failure in the provision of local TV across the UK.

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<sup>126</sup> Source: James Purnell speech to Oxford Media Convention, DCMS website, January 2008

## **OFCOM IS ENCOURAGING A DIGITAL DIVIDE**

- 11.33 Ofcom is encouraging a digital divide. For those who can afford to pay for new equipment and ongoing subscription, digital platforms offer the prospect of hundreds of new TV channels. For those who cannot afford to pay, the DTT platform offers restricted choice dominated by the analogue incumbents.
- 11.34 Ofcom now has a 'once in a generation' opportunity to break-up the monopoly over universal terrestrial capacity held by the analogue operators encouraging choice, competition and diversity on a universal basis.

## **OFCOM'S DUTY IS TO CONSIDER THE INTERESTS OF ALL CITIZENS**

- 11.35 Channel 6 offers the enticing prospect of a new public service network, combining at least 50 local content services with other attractive networked programming, catering for a wide variety of tastes and interests across the nations and regions of the UK.
- 11.36 Channel 6 will provide a new tier of independent television operated from the sub-regions of the UK. Every UK citizen would be guaranteed access to a new local public service channel, free-to-air, providing news and information targeted to where they live. Digital switchover need not just be more of the same from the incumbent broadcasters, but a rich and diverse fountain of innovative new productions from all corners of the UK.
- 11.37 Local TV is the one digital service demanded by even the most 'reluctant adopters' of digital technology. It is Ofcom's duty to consider the interests of all citizens when assigning universal multiplex capacity.

## **CHANNEL 6 COULD PROVE A SIGNIFICANT LEGACY OF DSO**

- 11.38 Historically, all new advances in broadcasting policy have been fiercely opposed by much of the prevailing establishment. Ofcom must find the courage and conviction to meet the demand for local TV on Freeview clearly expressed by the UK public.
- 11.39 **A local Channel 6, in every part of the UK, could be part of the long term legacy of digital switchover.**

## We Believe

- In a free and fair society at least one channel should be a local channel representing the views and opinions of local people.
- Local TV, more than any other resource, has the potential to educate people about the issues that directly affect their lives.
- The evidence of demand for both local TV on Freeview and enhanced SD public service plurality on Freeview is overwhelming.
- Ofcom must not allocate and assign any incremental DTT multiplex capacity before undertaking a full analysis and consultation on the case for Channel 6 using add/drop across the United Kingdom.

### Further information

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## ABOUT UNITED FOR LOCAL TELEVISION

### UNITED FOR LOCAL TELEVISION

United for Local Television is an umbrella group representing a number of local television practitioners, advocates and voluntary organisations from the commercial, community and municipal sectors.

United for Local Television believes the potential economic, social and democratic benefits of local TV are of such a magnitude that a new network should be granted 'public service' status with guaranteed access to universal DTT multiplex capacity alongside incumbent PSB operators.

United for Local Television further believes access to interleaved frequencies must be protected by Ofcom (or any future Band Manager) to enable local TV to develop smaller-scale services at the hundreds of DTT relay sites in use across the UK.

### CURRENT MEMBERSHIP, JANUARY 2008

#### Local Television / Restricted Service Licence (RSL) holders:

- Capital TV, Media4Creative (1 RSL – Cardiff)
- MATV, Midlands Asian Television (1 RSL – Leicester, Virgin and Sky)
- SIX TV, Milestone Group (5 RSLs – Oxford, Fawley, Southampton, Portsmouth and Reading)
- York TV and Norwich TV, EBS Newmedia (2 RSLs – York and Norwich)
- Northern Visions/NvTv (1 RSL – Belfast)

#### Community and Local TV Operators and Campaigners:

- Chris Booth, Association of Community Television Operators (ACTO)
- Dave Rushton, Institute of Local Television
- Graeme Campbell, Mimir-Rushes, Fife and Media Access Projects Scotland
- Peter Williams, PWTV Ltd
- Nic Millington, Rural Media Company, West Midlands
- Phil Shepherd, Somerset Film
- Chris Haydon, Southwark TV & Community TV Trust
- Murray Dawson, Station House Media Unit, Aberdeen

#### Public Voice Coalition Members:

- Association of Chief Executives for Voluntary Organisations
- Broadcasting Support Services
- Community Media Association
- CSV (Community Service Volunteers)
- Media Trust
- IBT (International Broadcasting Trust)
- National Council for Voluntary Organisations
- Timebank
- Voice of the Listener and Viewer

### HOUSE OF COMMONS CULTURE, MEDIA AND SPORT COMMITTEE INQUIRY – RESPONSE FROM UNITED FOR LOCAL TELEVISION

United for Local Television notes the comments of the House of Commons Culture, Media and Sport Committee inquiry into public service media content. Overall, the Committee argues convincingly that the market can often be relied upon to deliver public service content. It is notable that the Committee is most critical of Ofcom's proposal to intervene in the market for web-based content by launching an internet-focused 'public service publisher'.

In light of the near-universal criticism it has received, United for Local Television appeals to Ofcom to radically reconsider its proposal for a public service publisher. Rather than intervene in web-based delivery, which would have a marginal impact on the nations and regions of the UK, Ofcom could support the development of new terrestrial based channels which would have a material positive impact in addressing evidence of market failure in public service broadcasting.

United for Local Television accepts that the House of Commons Culture Media and Sport Committee is concerned to ensure that Ofcom does not over-regulate the broadcasting market. In relation to local TV provision, the Committee did not have access to Ofcom's latest research which showed a number of those who could most benefit from local TV do not use the internet and are sceptical about digital technology. This greatly undermines the Committee's suggestion that the internet might prove an appropriate substitute platform to local TV on Freeview.<sup>127</sup>

Importantly, the new proposal for 'Channel 6' does not require any digital dividend spectrum but would access multiplex capacity that has already been reserved by Government and Ofcom for promoting the purposes and characteristics of public service broadcasting. It is notable that the Committee did not give explicit support to any proposal for universal multiplex capacity to be gifted to HD in preference to other public services, such as additional SD.

The Committee should be aware that Scottish Parliament's Enterprise and Culture committee has written to Ofcom demanding that *"no decisions are made on the use of broadcast spectrum that exclude the introduction of local TV channels with DTT roll out to reach all households in Scotland. Furthermore, spectrum should not be allocated or regulated so as to restrict or inhibit the introduction in future of new independent public channels from and for Scotland."*

With relation to interleaved spectrum, there is excess supply of interleaved frequencies at the majority of the 1,152 DTT sites in the UK. PMSE alone will not make use of all these channels and failing to allow interleaved frequencies to be used for smaller-scale local TV applications (broadly similar to the RSL regime already in place) will therefore create a high risk this spectrum will only be left fallow.

A new tier of local TV has the potential to offer local news programming, social action and community broadcasting and public service content. Reserving access to spectrum for local producers should be viewed as a guaranteed protection for local broadcasting and media plurality in an imperfect market.

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<sup>127</sup> This argument is set out in detail in Section 6 of the main submission made by United for Local Television in response to the Ofcom consultation *"The future of DTT"*.

## Annex 3

### Letter from Chair of Scottish Parliament Cross Party Group on Culture and Media to Ofcom, November 2006

While recognising the reserved powers applying to broadcasting, the outcome of this review of future spectrum use will have a direct impact on many devolved issues, including culture and enterprise. Scotland and its regions have distinctive cultures that are inadequately served through UK-wide media. This is of course not surprising, but it does need to be addressed.

The current situation for Scottish output has some positive aspects, but there is certainly scope for improvement at a Scottish level, and the addition of local output would provide a very significant boost to our cultural opportunities. There would of course also be many potential economic benefits arising from more devolved broadcasting.

At the CPG meeting, we noted that on 19th September Alex Neil MSP, who is the Convener of the Enterprise and Culture committee, wrote to Lord Currie Chairman of Ofcom, to request that “no decisions are made on the use of broadcast spectrum that exclude the introduction of local TV channels with DTT roll out to reach all households in Scotland. Furthermore, spectrum should not be allocated or regulated so as to restrict or inhibit the introduction in future of new independent public channels from and for Scotland.” There was general agreement with this sentiment, and it was agreed to write to you stressing the importance of retaining flexibility in the allocation of spectrum to allow a variety of local television companies to be set up to serve the cultural needs of our communities.

I understand that similar concerns have been expressed in Wales, and that additionally attention has been drawn to the role of television within the democratic processes of the devolved nations and regions. Clearly this is a matter that is also of great concern to us. The health of our democracy is in no small way dependent upon the health of the Scottish media, and we want to maximise any opportunity presented by new technology to enhance the democratic process.

In addition to requesting that technical measures be undertaken to ensure the flexibility of use of the system, the CPG was concerned about the issue of ownership of the digital spectrum. If the objective is to maximise income from the sale of the spectrum, if it is sold to the highest bidder and in perpetuity has its use determined by successive owners, then this clearly creates difficulties for the growth of local and community based alternatives which, especially in their early stages, are likely to be weaker commercial players than the big networks. We believe that a significant part of the spectrum should therefore be reserved to allow for the growth of local stations.

Cathy Peattie MSP  
Convener Cross Party Culture and Media Group<sup>128</sup>

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<sup>128</sup> Sent by Dave Smith from Cathy Peattie's office to DDR Consultancy study, 03/11/06

## Annex 4

### CURRENT DOMINANCE OF THE DTT PLATFORM BY THOSE WHO MONOPOLISED ANALOGUE TV

- As the table below demonstrates, 100 per cent of 17 SD video streams on the three current so-called ‘PSB’ multiplexes are provided by the same broadcasters who previously monopolised all analogue spectrum.
- Furthermore, of the 37 SD video streams currently broadcast on the DTT platform, 27 are owned or part-owned by the analogue incumbents, representing 73 per cent of the total platform.
- The remaining SD services are primarily subscription or specialist channels (e.g. shopping) with the exception of the three Sky channels which Ofcom is consulting on converting to subscription services.

#### Services currently operating on DTT<sup>129</sup>

<b>MUX 1</b>	<b>BBC1</b>	<b>MUX A</b>	<b>Five</b>
	<b>BBC2</b>		QVC
	<b>BBC3 / CBBC</b>		Bid TV (Virgin Media)
	<b>BBC News 24</b>		Price-drop TV (Virgin Media)
	BBCi text		<b>Five Life / TVX</b> (subscription)
<b>Total SD</b>	<b>4</b>		<b>Five US</b>
			Sentanta Sports (subscription)
<b>MUX 2</b>	<b>ITV1/GMTV</b>		<b>UKTV Gold</b> (subscription)
	<b>ITV2/GMTV2</b>		Nuts TV (IPC / Turner)
	<b>ITV3</b>		Various text/audio
	<b>ITV4/CITV</b>		Radio x 2
	<b>C4</b>	<b>Total SD</b>	<b>9</b>
	<b>E4</b>		
	<b>More 4</b>	<b>MUX C</b>	Sky 3
	<b>Channel 4 + 1 (previously Film4+1)</b>		Sky News
	Various text		Sky Sports News
	Radio x 2		<b>E4+1</b>
<b>Total SD</b>	<b>8</b>		<b>Dave (previously UKTV G2)</b>
			Various text
<b>MUX B</b>	<b>BBC4/Cbeebies</b>		Radio x 4
	<b>BBC Parliament</b>	<b>Total SD</b>	<b>5</b>
	<b>BBCi video 301</b>		
	<b>BBCi video 302</b>	<b>MUX D</b>	<b>The Hits (The Box 50% C4)</b>
	<b>BBCi video 305</b>		TMF (MTV Networks)
	Various text		<b>ITV2 + 1</b>
	Radio x 10		Ideal World
<b>Total SD</b>	<b>5</b>		<b>Virgin 1 / UKTV History (previously FTN)</b>
			<b>Film4 / Gems TV shopping</b>
			Radio x 9
		<b>Total SD</b>	<b>6</b>

Note: All SD video streams used to provide services that are owned or part-owned by BBC, Channel 3, Channel 4, Channel 5, S4C or their associated companies are in **BOLD ITALICS**

<sup>129</sup> Source: Ofcom consultation document, Annex 8, DTT Channel list November 2007 (Crystal Palace)

## Annex 5

### Public interest in watching television programmes reflecting different geographic areas – Ofcom research

Geographic Area	Percentage not interested	Percentage interested
My city / town / village	9	70
My neighbourhood	12	67
Nation (England, Scotland, Wales, Northern Ireland)	8	63
UK	7	62
My County	11	60
My region	11	59
Neighbouring areas	15	51
Neighbouring towns / cities	16	48
Neighbouring counties	20	35
Neighbouring region	19	35

Source: *Digital local: Options for the future of local video content and interactive services*, Ofcom, 2006

## Annex 6

### Platform share of UK's 60 million TV sets – Q3 2007

- As the table below shows the majority of TV sets have not yet been converted to digital. These are primarily secondary sets within a household.
- Many secondary sets are smaller than main sets and use only portable aerials (not roof-top). For these sets, picture quality and high definition is not a priority so much as access to public service channels. Anecdotal evidence suggests access to these secondary sets will be vital to enable a local TV service to maximise its audience within a household. HD is not a priority for these final analogue sets and will do little or nothing to enhance the success of the DSO process.
- The evidence suggests terrestrial TV will remain a significant platform for the foreseeable future. Only a tenth of 1 per cent of the UK's TVs are currently connected to ADSL, making it the smallest TV platform in the UK.
- Nearly 80 per cent of all new digital households now opt for 'Freeview' suggesting this platform is growing exponentially relative to all other platforms.

#### Platform share of all TV sets

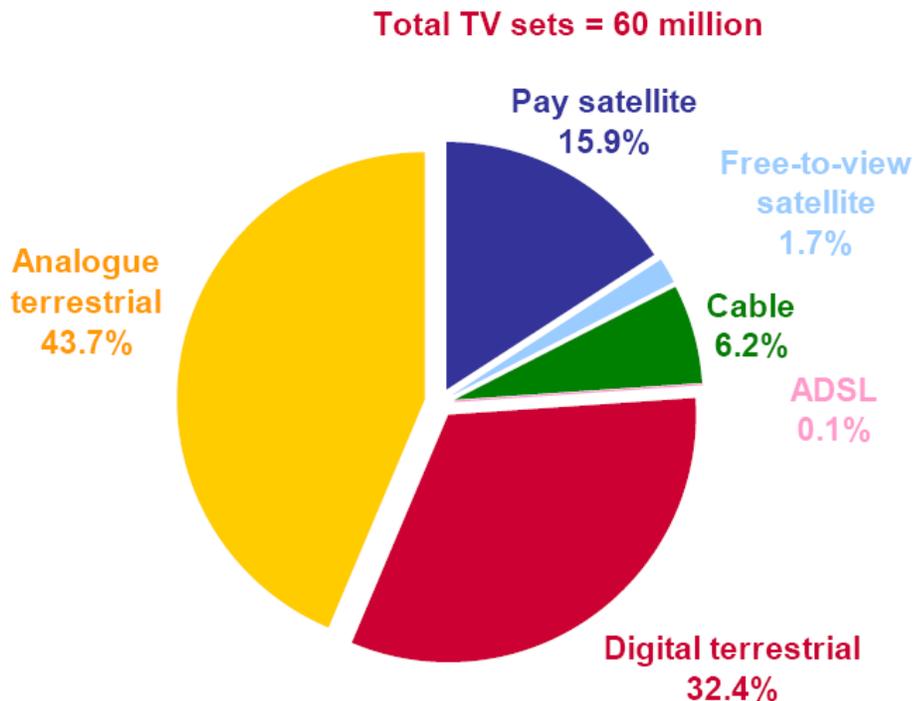


Chart source from *The Communications Market: Digital Progress Report, Digital TV, Q3, 2007*, Ofcom, December 2007. Data based on information supplied by platform operators, GfK research and Ofcom estimates.

## Annex 7

### Local TV and PSB – Summary of main policy options for Ofcom to consider in PSB review & final phase of DDR

Proposed intervention	Status quo intervention	United for Local Television comment
Reserve video & data stream for Channel 6 on universal multiplex to enable 98.5 per cent of UK population to receive a local TV service on 'Freeview'. Potential to also broadcast Teachers TV, Community TV and/or other direct funded 'public service publisher' content that cannot be expected to 'out-bid' pure commercial providers for capacity.	Gift 100 per cent of the English language services on universal multiplexes to London-network based incumbents thereby denying opportunity for new services based in the nations and regions. There is no functioning market for universal multiplex capacity so intervention shuts-out any new competition. No local TV channel on universal multiplexes – despite high audience demand.	Channel 6 would be a radical new public service network based in the nations and regions with local content licence conditions set following research and consultation. 98.5 per cent of citizens would be guaranteed to have their own local TV service with local news, local production and local advertising. This would start to bring UK in line with provision in the rest of the democratic world and enhance fairness of current intervention which assigns all universal multiplex capacity (for English language services) to the same broadcasters who previously monopolised analogue TV spectrum. Viability assured by using add/drop at major DTT stations.
Use capacity already funded by licence fee on a BBC multiplex to enable Channel 6 to launch and enhance public service plurality and choice.	BBC uses capacity for little-valued 'red button services' denying opportunity for new entrants on universal multiplexes (even so would still leave capacity for 2 or 3 'red button services' from BBC)	The licence fee and the gifting of universal capacity to the BBC represents a significant intervention in the market in favour of state provision of broadcast services. The use of BBC-operated capacity already paid-for by the licence fee requires no new use of public funds but allows a new entrant to the DTT platform to meet public purposes.
Give Channel 6 priority in EPG. Encourages competition by giving equal status to new entrant as incumbent PSBs near start of EPG. Makes it easy for viewers to find new channel genre – wherever you are in UK "Channel 6" is the local channel.	Non-PSB channel (ITV2) benefits from Channel 6 position on DTT EPG. Entrenches existing dominant status of incumbents and inhibits competition.	Existing PSB services have the benefit of 'heritage' status built up over many years and the ability to cross-promote digital channels on their main channels. Intervening to award Channel 6 priority status on the EPG would have a material positive impact on a new network and only a minor impact on the non-PSB channel currently gifted this privileged EPG position.
Give Channel 6 'must carry' status on local cable franchises. Enhances viability of services and encourages plurality of views available.	Cable franchises under no obligation to carry local programming. Risks denying opportunity for public to benefit from new service.	Guaranteed cable carriage alongside DTT would ensure the vast majority of UK homes have access to a local Channel 6 service. Would be in line with commitments to local programming generally made by the original cable franchisees.
Reserve 'in group' interleaved frequencies at 1,152 DTT stations for small-scale local TV operators to use for 'RSL' type broadcasts. RSLs have always shared interleaved spectrum with PMSE and there is no reason to end this arrangement.	Allow spectrum to remain fallow as Band Manager may have no financial incentive to release capacity for RSLs or the expertise to conduct a comparative selection process where there are competing small-scale groups.	Residents associations, public bodies, voluntary groups and commercial organisations able to use spare frequencies to provide small-scale local TV services at 1,152 DTT sites. If spectrum is not released to market via RSL-type process high risk it will not be used at all.

<p>A modest Local TV Fund supported by licence fee to promote small-scale broadcasting and creativity.</p>	<p>Licence fee monopolised by BBC. Loss of new creative opportunities across UK.</p>	<p>A modest Local TV Fund could help a new sector of community broadcasting to flourish in all parts of the UK with no material impact on core BBC public services.</p>
<p>Impose competition conditions on any group who wishes to use interleaved or cleared spectrum for DVB-T including: (i) limiting the proportion of capacity that can be controlled by any one broadcaster or network provider; (ii) requiring a diversity of editorial programme services be provided rather than pure teleshopping and (iii) require one video stream is assigned to a local TV operator in the interleaved spectrum wherever this is used for DVB-T. Ensure multiplex operators act in a manner that is fair and non-discriminatory. Also consider 'importing' interoperability and ownership restrictions from BA96 into stand-alone 'WTA' regime. Conditions to apply where spectrum acquired at auction and used for DVB-T.</p>	<p>Allow a small number of programme and/or transmission providers to dominate the DTT platform, distorting the market for multiplex capacity and restricting competition.</p>	<p>Competition and content conditions on a multiplex would ensure that Ofcom retains the ability to ensure there are a wide range of programmes on the DTT platform catering for a variety of tastes and interests. Also prevents a small number of network providers or vertically integrated broadcasters from controlling all capacity prohibiting price competition. Would be compatible with an application and technology neutral auction since conditions would only apply if a bidder chose to implement the assignment for DTT – not any other uses of the spectrum. Comparable to Ofcom's decision to impose content diversity conditions on local and national DAB radio multiplexes which Ofcom has elected to award under the terms of the BA96 rather than WTA alone (Ofcom also relies on its general duties to impose additional diversity requirements on national DAB multiplexes beyond those set out in the BA96 award criteria).</p>
<p>Regulate access to DTT transmission masts to ensure interleaved and cleared spectrum assignments have a value to DTT bidders. Ensure access to masts is built into the auction process.</p>	<p>Allow existing DTT site owners to prohibit new entrants from accessing DTT masts, effectively rendering interleaved or cleared assignments intended for DTT unusable. Allow existing DTT site owners to exploit their monopoly status, charging obscene premiums to rivals who acquire spectrum for DTT purposes.</p>	<p>Existing DTT multiplex owners benefit from the DTT platform being capacity constrained as this allows them to charge premium rates to service providers. A new entrant under the control of a rival might reduce the rates that could be charged for existing multiplex capacity. To prevent a rival from launching, DTT multiplex owners may not allow them to access existing DTT sites or, alternatively, could dictate outrageous terms for site access, exploiting their monopoly status. The true value of interleaved or cleared assignments in any auction process will be severely depressed if DTT site owners are not regulated. In practice there will be few bidders, denying the benefit of any meaningful auction process.</p>
<p>Adopt an active competition policy to encourage new entrants to enter the DTT platform. Ensure capacity is reserved for new public service content providers and establish a public service publisher to fund original innovative programme-making.</p>	<p>Allow incumbent PSB operators to effectively hold Ofcom to ransom over the future of public service content.</p>	<p>New public funding for public service content would not represent an efficient use of public resources unless there is also reserved access to multiplex capacity. Without any reserved access to DTT, the main beneficiary of direct funding will be multiplex operators, not programme makers. Public funds will be diverted from the tax payer to transmission network operators in order to 'buy back' capacity at a spectacular premium to that originally paid at auction.</p>

## Annex 8

### 6 good reasons why the UK needs Channel 6....

1. **Enhancing local democracy:** An opportunity to see and hear local representatives, for politicians to speak and be questioned on local issues, enhancing discussion and debate.
2. **Promoting civic information:** An outlet for schools, charities, sports associations, community groups, ethnic groups, museums, voluntary associations and public organisations to promote their services – encouraging participation and active citizenship.
3. **Fulfilling the purposes and characteristics of PSB:** A tangible medium for engaging citizens with content that supports tolerance, understanding and mutual respect, reflecting cultural diversity and increasing knowledge. Targeted programming to promote local projects and initiatives, creating partnerships with local colleges and the public sector to tackle problems such as lack of basic skills and social disengagement.
4. **Regional production and citizen access:** Distinctive regional production and an outlet for experimentation and risk-taking – with opportunities for the development of new talent and formats – thereby widening access to broadcasting for new independent producers, people from different backgrounds and viewers themselves, creating new media employment and access opportunities across all the nations and regions of the UK.
5. **Encouraging enterprise and economic development:** Geographically targeted advertising and sponsorship opportunities for local businesses – currently 'crowded out' of almost all commercial TV airtime by national brands, plus economic features covering retail, property, recruitment and training.
6. **Plurality of broadcasting voices:** An alternative to the national PSB's in the provision of bespoke regional and sub-regional news and current affairs – providing much-needed competition and an outlet for innovative new content to be shared on a region, nation and UK-wide basis. A voice not just for geographic communities but also communities of interest such as senior citizens, faith groups, parents and the young.

....No good reason why not.