

This is the response of Councillor Martin Curry, to the consultation by Ofcom, into the proposal by National Grid Wireless Ltd (NGW) and British Sky Broadcasting Ltd (Sky) to remove the three free to air (FTA) channels that Sky currently provides on the digital terrestrial television (DTT) platform and replace them with five pay TV channels using a different system of encryption and compression to those currently in use for either FTA or Pay TV on the current DTT platform.

I oppose the removal of Sky News from Freeview in particular, and Sky Sports News to a lesser extent.

PSB Status should be awarded to Sky News, in order to preserve its position on the Freeview platform, but if they are unwilling to accept continued FTA carriage, they should not be automatically allowed to take over the bandwidth vacated by their withdrawal from Freeview.

Any contract already entered into between BSkyB and NGW to carry an encrypted service should be rendered null and void, and Ofsted, under its duty to citizens, which is separate from its duty to consumers, should seek to ensure at least one other news channel, such as Euronews or CNN International (possibly in partnership with ITN) is carried on the Freeview platform.

Other channels, in particular the two non PSB Channels funded wholly or partly from Government funds, Teachers TV and the Community Channel, whose content meets the most narrow definition of PSB broadcasting should be allocated some of the bandwidth vacated by BSkyB.

Pay TV should be relocated onto broadband (including wireless) and ADSL, for those unable to access satellite or cable provision, rather than taking up the very limited DTT bandwidth.

Tiscali TV already offers the ability to subscribe to the channels proposed by BSkyB, in what appears to be an attempt to reduce the variety and choice available to consumers who choose not to subscribe to their services, via their existing delivery platforms of satellite, cable and ~~ADSL~~, **Broadband**.

There are three main issues to be considered in this proposal;

1. Removal of FTA channels, either to be replaced by Pay TV channels from Sky or others
2. A change in the permitted method of compression, necessitating the purchase of new receiving equipment by existing viewers, at the very time when the switching off of analogue TV transmission system has begun.
3. The duty owed by Ofcom to citizens, rather than consumers, which appears to have been omitted from the executive summary.

Removal of FTA channels, either to be replaced by Pay TV channels from Sky or others

I am opposed to the removal of FTA channels on DTT and the use of the bandwidth liberated by that loss for subscription based channels.

Whilst there is a good economic argument for Ofcom not seeking to interfere in the market for satellite or digital cable broadcasting, the position with regard to DTT is fundamentally different.

In economic terms, the market place for DTT is not a free market in the economic sense, 2 ½ muxes, (3 in Wales) are restricted by a decision of Government to carriage of PSB channels, or channels owned or licensed by PSBs, leaving only three multiplexes fully available throughout the UK for carriage of other services.

The nature of the channels permitted to be carried on the remaining Muxes is subject to Ofcom regulation, and Ofcom's predecessor, the ITC, rightly imposed conditions on the nature of BSkyB's participation, in order to address competition concerns about their inclusion in the Freeview venture, a venture that they are now seeking to leave with the removal of their 3, FTA channels.

The spectrum available for DTT is greatly restricted, with only approximately 80% of the population able to receive even six multiplexes. After analogue switch off, it is possible that the situation may improve, but there is not likely to

be more than a doubling, at most, of the number of TV Channels that can be carried on the system.

Broadcast Pay TV restricts the capacity of a multiplex to carry the highest amount of programming, as approximately 10% of bandwidth is used to encrypt programming, not always successfully, as was found with the "gold cards" used to decrypt the former DTT Pay TV operation, ITV Digital.

Topup TV have apparently recently changed the encryption system used for their limited Pay TV system, in order to attempt to protect their revenue stream, in the process removing the ability of the "legacy receivers" to continue to receive encrypted services.

At present, the DTT system suffers from the restrictions on bandwidth already in place, with digital artefacts common, even on the supposedly protected public service channels, which is a particular concern for viewers of public service broadcasting such as live sport.

(Despite attempts to remove sport from a definition of PSB, the continued existence of listed events, emphasises the public service nature of broadcast sport.)

There are already three alternative methods for potential subscribers to access BSkyB's proposed DTT Pay package, essentially all that this proposal does is reduce the amount of bandwidth available for FTA DTT, whilst providing a fourth means for subscribers to access BSkyB's subscription services.

(Ofcom have recently launched a consultation on the provision of High Definition TV channels on DTT, and I will respond to that consultation separately, however Ofcom do not appear to be enforcing reasonable Standard Definition viewing quality, in my opinion, if they did, there would not be such a desire for HD channels.)

A change in the permitted method of compression, necessitating the purchase of new receiving equipment by existing viewers, at the very time when the switching off of analogue TV transmission system has begun.

The process of Digital Switch Over has begun, with Whitehaven having already seen its analogue TV transmissions switched off, and the rest of the country due to follow in the next few years.

There are good arguments for changing the method of broadcasting digital TV channels terrestrially to more efficient systems.

The decision to do so, should not be based upon a particular bid from two commercial businesses, when to doing so would inflict considerable cost on consumers, undermine the sales of digital receiving equipment carrying the tick logo from Digital UK, and possibly slow down the process of Switch Over. (The proposals put forward by Ofcom, to clear a PSB Mux for a PSB HD service/PSB Sidebar service make more sense, but are subject to separate consultation.)

Additionally, there should not be two different encryption systems in use on DTT, unless they can be incorporated in receiving equipment from any manufacturer that chooses to incorporate them in one STB or integrated TV.

The duty owed by Ofcom to citizens, rather than consumers, which appears to have been omitted from the executive summary.

Ofcom have a duty to citizens, separate from their duty to consumers, which would be breached if they allowed Sky News in particular, and Sky Sports News, to a lesser extent to be removed from Freeview, and not to be replaced by FTA channels of equal value in terms of “quality and range.”

There is a sufficient range of FTA entertainment channels available to make the loss of Sky Three a matter that need not concern Ofcom.

Sky News provides a high quality, complementary news channel to the BBC's BBC News24, and is currently the Royal Television Society's **News Channel of the Year**.

My preference would be for Sky News to remain as a part of the Freeview service, on a 24 hours, seven days a week basis.

If BSkyB are unwilling to continue to provide the service on the present terms and conditions, then **they should be offered PSB status**, by the Secretary of State, with the rights and privileges that this provides.

PSB status would mean that the channel would have to be included on a PSB Mux, and as the Secretary of State is able to direct the BBC to carry non-BBC services on Mux 1/PSB1 it should be possible for Sky News to continue to be carried as an alternative news channel to BBC News 24.

If BSkyB are unwilling to continue broadcasting Sky News on Freeview, then Ofcom should seek to replace Sky News with another 24/7 news channel.

In order of preference, I suggest;

Euronews, CNN (possibly in partnership with ITN), France 24 English, Al Jazeera English.

These channels should be approached and offered FTA PSB status, if BSkyB turn down the opportunity to continue broadcasting Sky News on Freeview.

If none of these channels is prepared to enter into a carriage arrangement, then the two FTA satellite business news channels, Bloomberg and CNBC Europe, should be offered carriage.

With regard to Sky Sports News, if BSkyB are unwilling to continue broadcasting Sky Sports News, then the Irish owned, ITN operated channel Setanta Sports News or the French owned Eurosport News channel could be offered carriage on a NGW Multiplex as a FTA channel, although I would not regard the loss of a dedicated FTA Sports News channel as a loss in the sense that a reduction in the number of News Channels to one would be.

Because of the restricted nature of the market, two TV channels which provide programming which in my opinion deserves the award of PSB status, **Teachers TV** and the **Community channel**, both of which receive Government funding, are unable to broadcast FTA on Freeview, for as much of the day as they do on satellite and cable as FTA channels.

If BskyB do remove their three channels from Freeview, as they are entitled to do, then, in order to provide for a variety of tastes and interests, Teachers TV and the Community channel should be specifically named by Ofcom as replacement channels, even if not on a fully 24/7 basis as , it should be possible for the two channels to share one 24/7 stream if space can not be found for full carriage.

In the event that Ofcom does not allocate this level of carriage to these two channels, I urge the Secretary of State, to use his power to designate these two channels as PSBs, and to direct carriage on either PSB3 or PSB2, in order to address this example of **market failure**.

Finally, this request from NGW and BSkyB has only been able to be made, because of a decision, which I regard as perverse, made by Ofcom, to remove the FTA requirement from NGW operated Multiplex licenses, following consultation in 2 005.

As well as many individual viewers and citizens who opposed the premature removal of the license conditions, which were imposed in order to assist in the growth of DTT in preparation for DSO, three of the Public Service Broadcasters responded in opposition to the proposals from Ofcom and were ignored.

I would urge Ofcom to reread the views of the BBC, Channel 4 and Channel 5 (five) which were submitted to the 2005 consultation, and which I have extracted and copied below. Ofcom should then act in accordance with their views and all of the individuals who wrote arguing that the removal of the FTA requirement was wrong.

A requirement which made Freeview such a success and which has made digital switchover possible, could now be threatened by a unacceptable diminution in the quality and range of FTA DTT services.

Extracts from the BBC's 2005 response to the proposed removal of FTA requirement on NGW multiplexes....

The first extract is a suggested condition for Ofcom to impose on NGW,

the multiplex licensee cannot change the services they carry in a way which would "unacceptably diminish" the capacity of the services provided to appeal to a variety of tastes and interests.

The second extract is a comment on the importance of the NGW provided channels in terms of variety and choice, and of Sky News in particular.

In addition, the contribution towards variety and choice provided by Sky Three, Sky Sports News and UKTV History (which has a strong appeal to an older, upmarket demographic) should not be overlooked, nor should the advantages of strong competition between Sky News and BBC News 24.

Extract from the Channel 5 (five) 2005 response to the proposed removal of FTA requirement on NGW multiplexes

A crucial part of Freeview's success has been that it is primarily and predominately a free-to-air offering.

Millions of Freeview set-top boxes and IDTVs have been sold in each of the last three years, a rate of take-up that was clearly way beyond its pay-based predecessor. Consumers clearly value the provision of a sizeable number of high-quality free-to-air channels.

Five believes that maintaining the predominately free-to-air nature of Freeview is essential if the platform is to continue to grow and prosper in the years ahead and play an essential role in digital switchover

Extract from the Channel 4, 2005 response to the proposed removal of FTA requirement on NGW multiplexes

We would like to start by stating that, in principle, we support Ofcom's policy of removing regulatory interventions where they are unnecessary.

However, in the case of the 'free-to-air only' requirement for multiplexes B, C and D, we do not consider that this regulatory intervention is unnecessary and believe that Ofcom has not made the case for its removal.

We therefore do not support Ofcom's proposal in the consultation document to remove the 'free-to-air only' requirement. Our position is based on the following three reasons:

- We consider that the 'free-to-air only' requirement was a fundamental condition of the original licence application and that BBC Free to View Ltd and National Grid Wireless Ltd should be held to the conditions they committed to in accepting the multiplex licences for the duration of the licence period;***
- We are concerned that removing the 'free-to-air only' requirement at this time would undermine the successful Freeview proposition and the achievement of digital switchover; and***
- We do not believe there is a compelling justification for removing the 'free-to-air only' requirement from the current licences.***