



Switchover related changes to DTT Licences

Statement following consultation

Statement

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Section 1

Summary

- 1.1 This Statement summarises the most important points of general interest made by the respondents to the Ofcom consultation on switchover-related changes to digital terrestrial television (DTT) licences issued on 19 July 2006. It sets out Ofcom's decisions in relation to the switchover-related conditions to be included in the current DTT multiplex licences (see section 2.10 for details of multiplex operators and licence periods) and in the DTPS, DTAS and DSP licences (the DTT service licences) and explains the regulator's reasoning. It also confirms Ofcom's decision about who should hold the Wireless Telegraphy Act licences relating to DTT spectrum after switchover.

Statutory Background

- 1.2 Ofcom has statutory powers to vary and add new conditions to multiplex licences and to DTT service licences.

Consultation

- 1.3 Ofcom has considered respondents' comments but does not believe that any compelling arguments have been advanced to suggest that Ofcom should alter its provisional proposal at switchover to revoke the WTA licences currently held by the transmission operators and issue new WTA licences to the multiplex operators.

Switchover conditions to be included in multiplex licences

Provision of television multiplex service – coverage obligations

- 1.4 Ofcom proposed to impose a duty on each multiplex licensee to ensure that, as digital switchover (DSO) takes place in the various regions of the UK, the licensee's obligations come into force to broadcast from the DTT broadcasting stations required to achieve the necessary level of coverage. The suggested licence condition will be inserted in the licences in the form proposed by Ofcom. There is still uncertainty as regards planning for DSO. Ofcom considers that the appropriate response is to provide certainty by placing multiplex operators under a formal obligation to broadcast from a set number of sites at DSO in order that all stakeholders can plan ahead with confidence. The lists of stations from which multiplex operators will be required to broadcast will be periodically updated and reviewed.

Cooperation and coordination with other parties

- 1.5 Some form of condition should be included in these licences to ensure multiplex licensees cooperate with other parties as regards digital switchover. To fulfil its duty to promote switchover, the regulator must have a backstop power to ensure all relevant licensees cooperate with the process. It is not necessary to restrict the breadth of the proposed condition as suggested by some respondents. This is because the condition is subject to implicit restrictions e.g. all requests for cooperation must be reasonable.

Annual report and information relating to digital switchover

- 1.6 The need to be kept informed of licensees' progress towards, and plans for, digital switchover is sufficiently important that a specific duty should be included in the multiplex licences to provide information annually to Ofcom. With Ofcom's prior approval, however, a multiplex licensee may fulfil this DSO reporting obligations by means of consolidated or joint reports prepared in liaison with other Ofcom licensees with relevant obligations. The first Annual Report must be provided by 31 December 2007.

Communications with viewers

- 1.7 Ofcom has decided that it is appropriate to include a condition in the multiplex licences obliging licensees to ensure viewers are informed about rescanning. The proposed condition has been amended to take account of respondents' comments. For example, licensees will be under a duty to inform viewers, not "adequately" inform them; and a third party, such as Digital UK, may fulfil this duty on behalf of the licensee.

Digital Switchover Date and Timetable

- 1.8 Over a year after the government in September 2005 announced its indicative timetable for regional DSO, and having inserted an analogous timetable in the DRLs in October this year, it is appropriate for Ofcom to include a similar provision in the multiplex licences. Ofcom will however keep the timetable, and related lists of digital terrestrial broadcasting stations, under regular review. The date for the completion of switchover in the multiplex licences in all UK regions, except the Channel Islands, will be 31 December 2012, consistent with the Government's published timetable. 31 March 2013 shall be the date by which switchover shall take place in the Channel Islands.

Digital Terrestrial Broadcasting Stations

- 1.9 As regards the licensed public service broadcasting (PSB) multiplexes (i.e. 2 and B), Ofcom will insert a list of 1,154 DTT broadcasting stations and dependent relays from which the licensee must broadcast at switchover. This list will however be subject to possible amendment soon in light of Ofcom's opinion that, for the coverage of the PSB multiplexes to be appropriate at switchover, the holders of digital replacement licences (DRLs) need to adopt an additional nine transmission relays. Ofcom will be writing shortly to the holders of DRLs on this point. In order to ensure reasonable DTT coverage at DSO, it may be necessary for Ofcom to propose in due course that a further small number of relays are adopted. The list will be subject to regular review by Ofcom and be amended as necessary.
- 1.10 Concerning the commercial multiplexes (i.e. A, C and D), Ofcom will include a condition obliging the licensees to transmit at switchover from, with minor amendments, their current list of sites. The commercial multiplexes will not be under any obligation in their licences to adopt additional sites. Ofcom however will consider future requests from the operators of commercial multiplexes to adopt additional sites in order to increase their coverage in the UK.

DTT service licences

Cooperation and coordination with other parties

- 1.11 Ofcom has concluded that it would on balance be appropriate to include an obligation on DTT service licensees to cooperate with other parties in the process of switchover. It is not necessary to restrict explicitly the width of the proposed cooperation condition because it is implicit that a licensee need only comply with reasonable requests.

Communications with viewers

- 1.12 Several respondents objected to this suggested condition being included in DTT service licences. Taking into account all the circumstances, Ofcom has concluded that it is not necessary or appropriate to include any condition about rescanning information in the DTT service licences.

Other issues

Wireless Telegraphy Act licences

- 1.13 Ofcom has considered respondents' comments but does not believe that any compelling arguments have been advanced to suggest that Ofcom should alter its provisional proposal at switchover to revoke the WTA licences currently held by the transmission operators and issue new WTA licences to the multiplex operators.

Technical Codes regarding Transmission

- 1.14 Ofcom acknowledges that the Code of Practice on Changes to Existing Transmission and Reception Arrangements requires amendment. Ofcom will shortly be starting discussion about revisions to this document with multiplex operators and broadcasters with a view to re-issuing a revised version by mid-2007.

Section 2

Introduction

Purpose of this document

- 2.1 This Statement sets out the most important points of general interest made by respondents to the consultation issued on 19 July 2006. It analyses the various arguments, and explains why Ofcom has reached its decisions in relation to the switchover-related conditions to be included in the DTT multiplex licences (the multiplex licences). It also explains Ofcom's decisions as regards switchover-conditions to be added to the DTT service licences.
- 2.2 In the light of the responses to the consultation, Ofcom has in a number of cases decided to make amendments to the wording of the conditions originally proposed in the consultation, but in others has decided on no amendment. This Statement also includes an impact assessment which has been slightly revised to take account of comments from stakeholders, and guidance for licensees and other stakeholders on future process and policy.

Background

- 2.3 Ofcom has concluded that the move towards digital switchover (DSO) in the UK has progressed to the point where it is now necessary and desirable to insert appropriate switchover-related conditions in the five multiplex licences and all digital television programme service (DTPS), digital television additional service (DTAS) and relevant digital sound programme (DSP) licences. Although the reasons are set out in detail later in this Statement, Ofcom's overall aim is to ensure that the multiplex operators and holders of DTPS, DTAS and relevant DSP licences are under clear duties to cooperate with, and participate in, the complex process of DSO in the public interest. There are three types of licences issued by Ofcom which are directly related to DSO:
 - digital replacement licences (DRLs), which license Channels 3, 4 and 5 and Public Teletext to broadcast on the analogue and digital terrestrial (DTT) platforms;
 - multiplex licences, which authorise the operators of certain DTT multiplexes to provide a DTT service consisting of the packaging together of various programme services; and
 - licences covering various services broadcast on the DTT platform i.e. digital television programme service licences (DTPS, for TV channels); national digital sound programme licences (DSP, for radio stations), and digital television additional services (DTAS) licences which authorise services like games and teletext. These licences are referred to in this Statement as DTT service licences.
- 2.4 In December 2004, Ofcom issued the DRLs and included in them certain specific DSO-related conditions. The multiplex licences pre-date the DRLs. They were first granted in the late 1990s and some of them were re-issued with amendments following the surrender of the licences by ITV Digital in 2002. These licences contain very little specifically related to DSO.

The consultation

- 2.5 Switchover has important consequences for the multiplex licensees and, to a lesser extent, the DTT service licensees, especially following the Government's announcement in 2005 of a timetable for DSO in the UK. Following the Government's announcement and the Regional Radio Conference (RRC) which concluded in June 2006, Ofcom considered it appropriate to consult on a range of DSO-related conditions which it proposed should be inserted in the multiplex and DTT service licences. The consultation commenced on 19 July and closed on 27 September 2006.
- 2.6 Ofcom received 14 responses to the consultation, of which six were wholly confidential and one partly confidential. All of the non-confidential responses are available on the Ofcom website¹. All of the responses came from companies and corporations except one from an association, the Satellite and Cable Broadcasters' Group.
- 2.7 In this Statement, Ofcom summarises and responds to the main points made by respondents. Ofcom as appropriate will communicate directly with stakeholders to reply to particular concerns.
- 2.8 Many respondents to the consultation stressed the importance of, and their support for, digital switchover. A number also underlined the continuing uncertainty related to certain aspects of the process leading to DSO. Ofcom has considered all responses carefully and taken account of all relevant considerations in reaching the decisions set out in this Statement.
- 2.9 Having decided to vary the licences in accordance with its powers under statute, Ofcom will now implement the variations as outlined in this Statement as soon as practicable. Electronic copies of the variations to the licences will be available on the Ofcom website.

Digital terrestrial television multiplexes

- 2.10 Digital terrestrial television (DTT) is transmitted on television multiplexes. A multiplex is a collection of television programme, radio and data services that are broadcast together in a digital signal that occupies no more spectrum than just one analogue television service. Multiplexes are licensed by Ofcom under the Broadcasting Act 1996 or, in the case of multiplex 1, operated by the BBC under their Royal Charter and Agreement with the Secretary of State for Culture, Media and Sport. All multiplexes use radio spectrum, and their use of radio frequencies for this purpose is licensed in all cases by Ofcom under the Wireless Telegraphy Acts.

There are six television multiplexes:

- Multiplex 1 is operated by the BBC, carries BBC services and is not licensed by Ofcom.
- Multiplex 2 is operated by Digital 3&4 Ltd (jointly owned by Channel 3 and Channel 4) and the capacity on this multiplex is split between Channel 3 (48.5%), Channel 4 (48.5%) and the Public Teletext service

¹ http://www.ofcom.org.uk/consult/condocs/dtt_changes/responses/

(3%). The multiplex 2 licence came into force in 1998 and will expire in 2010.

- Multiplex A is operated by SDN Ltd (controlled by ITV plc), and 50% of the capacity on this multiplex is reserved for Channel 5 and (in Wales) S4C. The multiplex A licence came into force in 1998 and will expire in 2010.
- Multiplex B is operated by BBC Free to View Ltd (BBC FTV). The multiplex B licence came into force in 2002 and will expire in 2014.
- Multiplexes C and D are operated by National Grid Wireless Ltd (NGW). The multiplex B licence came into force in 2002 and will expire in 2014.

2.11 The main conclusions in Ofcom's statement *Planning Options for Digital Switchover* published in June last year,² were:

- all three multiplexes which will broadcast public service broadcasting channels (i.e. the so-called "PSB multiplexes" 1, 2 and B) at DSO should aim to achieve similar levels of coverage to all sites being operated for DTT by adopting the same mode and similar levels of power. (The expectation is that these three multiplexes will achieve coverage of about 98.5 per cent of the UK population and carry all the main national terrestrial TV channels i.e. BBC 1, BBC2, ITV1, Channel 4, Channel 5 and Public Teletext.)
- the commercial multiplex operators at DSO (i.e. the so-called "commercial multiplexes" A, C and D) should be able to determine their own coverage objectives in the light of their particular commercial interests provided that they do not allow the coverage of any multiplex to fall below its current level (i.e. 73% of UK households should continue to receive coverage of all six DTT multiplexes).
- a planning option which involves all three PSB multiplexes adopting the 64 QAM transmission modes at switchover has advantages over other options.

2.12 Since the start of the consultation, the percentage of households receiving digital television has continued to grow steadily. By the end of June 2006, around 17.7 million homes could receive digital TV in the UK – 70.3 per cent of all TV households.³ Digital UK (DUK), set up to market digital switchover to the nation, launched its first major national communications campaign at the start of May 2006, its second campaign including national promotions on the BBC began in October.

2.13 In September 2005 the Government confirmed the regional sequence and timetable for DSO in the UK, and that switchover should be completed in the UK by the end of 2012 (the Channel Islands were not included and are likely to switch in 2013). More recently, the Government announced that DSO should take place in Whitehaven in Cumbria in the autumn of 2007, earlier than in the remainder of the Border region. All of these developments

² Ofcom statement, *Planning Options for Digital Switchover*, 1 June 2005.

³ Ofcom's *The Communications Market: Digital Progress Report: Digital TV*, Q1 2006

indicated to Ofcom that the time has now come to insert appropriate DSO-related conditions in the multiplex licences.

DTPS, DTAS and DSP licences

- 2.14 These licences relate to commercial services i.e. the services are typically funded through advertising revenue and/or subscription revenue and they do not have any public service broadcasting or positive programming obligations. There are at present about 40 active DTPS licences, 20 DTAS licences and 6 relevant DSP licences (i.e. for radio services broadcast on the DTT multiplexes. DSP licences are also issued to cover radio services broadcast exclusively on radio multiplexes). At the moment, the DTT service licences do not contain any conditions relating expressly to digital switchover.
- 2.15 Ofcom believes that the cooperation of the holders of DTT service licences is necessary to help ensure the successful completion of DSO and to minimise inconvenience to consumers of services on the DTT platform. Holders of DTT service licences, unlike DTT multiplex operators, have a direct relationship with viewers and, in the case of DSP licences, listeners.

Wireless Telegraphy Act Licensing

- 2.16 There is a parallel regime for the licensing of spectrum for use by terrestrial broadcasting. Licences are issued under the Wireless Telegraphy Act 1949 (as amended) (WTA) to authorise the establishment and use of equipment for the purpose of providing broadcasting services for general reception.
- 2.17 Broadcasting Act and WTA licences are complementary. WTA licences authorise the use of all the transmitters and relay stations from which DTT services are currently broadcast, and will be transmitted after DSO. WTA licences will need to be progressively updated as DSO progresses round the country to reflect the new frequency assignments for each of the DTT multiplexes and the switching off of the analogue signal.

Section 3

Switchover conditions to be included in multiplex licences

Ofcom's powers and duties

- 3.1 Ofcom has statutory powers to vary and add new conditions to multiplex licences. It has similar powers covering DTPS, DSP and DTAS licences (the DTT service licences). Section 3(4) Broadcasting Act 1996 (as amended) (the 1996 Act) states: "Ofcom may vary a licence by a notice served on the licence holder if ... the licence holder has been given a reasonable opportunity of making representations to Ofcom about the variation". Further, a licence may include "such conditions as appear to Ofcom to be appropriate having regard to any duties which are or may be imposed on them, or on licence holder, by or under" the Broadcasting Acts 1990 and 1996, and the Act. (See sections 4(1)(a) and 43(1)(a), 1996 Act).
- 3.2 In light of the clear benefits which accrue to the UK and to consumers from digital switchover, Ofcom has concluded that it is under an implicit duty to promote digital switchover in a proportionate way. This obligation is a consequence of a number of statutory duties which bind Ofcom. For example, Ofcom is required to secure the optimal use of the radio spectrum and the availability throughout the UK of a wide range of television and radio services which are both of high quality and calculated to appeal to a variety of tastes and interests. (See sub-sections 3(2)(a) and (c) of the Act). Ofcom is also under a duty to ensure that the DRL service of Channel 3 and Channel 5 is one that "appears to Ofcom to be a service that is equivalent in all material respects to the service the provision of which in analogue form was authorised by the existing licence" (section 215(4)(b) of the Act). Ofcom has interpreted this obligation to mean inter alia that the digital service continues to serve the same geographical area as the former analogue service. It was on the basis of these obligations that Ofcom had the power to insert the DSO-related conditions in the DRLs, and has decided to insert analogous conditions in the multiplex licences and DTT service licences.
- 3.3 At present DTT broadcasts from 81 transmitters. This currently achieves coverage of around 73% of UK households. Ofcom has interpreted its obligation to ensure that the DRL services continue to serve the same geographical area as their current analogue services as meaning that Channels 3, 4 and 5 must after switchover achieve coverage which is substantially the same in digital as in analogue. In practical terms, this means that when switchover is complete in the UK around 98.5% of UK households must have access to ITV1 and Channel 4. In addition, it is expected that Channel 5 will move to a PSB multiplex at DSO and so increase its coverage to a similar level. As a result it will be necessary to convert the 1,074 analogue transmitters which are currently analogue only to DTT broadcasting, at switchover. All of these sites will be needed for broadcasting by the PSB multiplexes (i.e. multiplexes 1, 2 and B).

- 3.4 Ofcom's proposed approach for the commercial multiplexes is different. As explained above, Ofcom has already consulted publicly on their coverage objectives at DSO. Ofcom concluded in June 2005 that the commercial multiplex operators should be able to determine their own coverage at DSO, within the frequency plan for six multiplexes, provided it did not fall below the current level (73%).
- 3.5 At present these multiplexes broadcast from 81⁴ sites and achieve around 73% coverage. The outcome of the RRC suggests that the commercial multiplexes will at DSO be able to boost their power at these current sites and achieve coverage of around 90%. The result may be that the commercial multiplexes will decide not to seek to build any additional sites beyond the existing 81, as they have proposed in the past. Ofcom considers, however, that certainty about the number of any additional sites to be adopted by the commercial multiplexes is now necessary in the interests of all stakeholders (e.g. the regulator, broadcasters, consumers, transmission providers etc), and that this statement should be used to help provide this certainty.
- 3.6 The building of the new DTT infrastructure is a complex project, requiring rigorous co-ordination and planning. All the multiplex operators have a key role to play in this process. Ofcom believes it is imperative that it retains the necessary powers through the multiplex licences to be able to ensure, in the national interest, that the television multiplex licence holders cooperate fully and play their part in successfully achieving DSO in the years ahead. Similarly, since the holders of DTT service licences have a direct relationship with viewers and listeners on the DTT platform, Ofcom proposed to include in these licences some minimal conditions to ensure their cooperation with the process of switchover.

Ofcom's decisions regarding the multiplex licences

- 3.7 This section of the Statement summarises responses to the section of the consultation concerning new conditions to be inserted in the multiplex licences, Ofcom's decisions and as appropriate the regulator's reasoning. Some of these reasons are similar to those cited by Ofcom in deciding to insert analogous conditions in the DRLs. This Statement should therefore be read in conjunction with both the DRL consultation and statement and the Planning Options Digital Switchover consultation and statement⁵.
- 3.8 Most of the proposed new conditions are essentially the same for all five multiplex licences, and for all DTT service licences. Any specific issues relating to particular licences are treated separately below. There are for example substantial differences between the proposed coverage conditions to be inserted in the commercial multiplex licences compared to those for the PSB multiplexes.

⁴ In fact 81 sites in the case of multiplex A (SDN), and 80 in the case of multiplexes C and D (NGW). This slight difference should be noted throughout this Statement when referring to the number of sites from which the commercial multiplexes broadcast.

⁵ Ofcom consultation, Digital Replacement Licences to be offered to Channels 3, 4, 5 and Public Teletext, issued 14 September 2005; and Ofcom's statement on the same subject, dated 29 November 2004. Ofcom statement, Planning Options for Digital Switchover, 1 June 2005

Provision of television multiplex service

- 3.9 The purpose of Ofcom's proposed amendments to condition 2 was to set out the obligations on the licensee as to the coverage to be achieved by the service as from DSO. The most significant change proposed is to insert a new condition 2(3), analogous to the provision already included in the DRLs. It would impose a duty on the multiplex licensee to ensure that, as switchover takes place in the various regions of the UK, the licensee's obligations come into force to broadcast from the DTT broadcasting stations required to achieve the necessary level of coverage. The duty to broadcast from an increased number of sites would be an obligation on the holders of licences for PSB multiplexes, and would reflect the parallel requirement already inserted into the DRLs - which requires broadcasters to achieve a level of DTT coverage which will be broadly equivalent to their present analogue service. The question in the consultation was as follows.

Question 1: is the proposed new condition 2(3) of the multiplex licences necessary, appropriate and proportionate? If not, please explain why and propose alternative wording.

Points made by respondents

- 3.10 A number of respondents supported in principle what Ofcom aims to achieve by means of inserting this new condition in the multiplex licences. Some however (in confidential responses) suggested their support was conditional on Ofcom providing clarification about, for example, allowing multiplex operators to use both MPEG 2 and 4 and on AIP for spectrum utilised for broadcast use. For its part, the BBC suggested that it was not necessary to set out a coverage obligation in the licence for Multiplex B by means of a set list of broadcasting sites, and that it would be more appropriate for the coverage condition in this licence to reflect the language used in the new Agreement between the BBC and the DCMS.
- 3.11 Digital 3 & 4 suggested the proposed condition did not reflect the current uncertainties as regards the planned rolled out of DTT, and the licence should explicitly state that the multiplex operator will not be held responsible if resolution of any of the outstanding issues creates a delay to the programme or adversely effects coverage. It also suggested that future changes to the coverage obligation should be automatic, to reflect changes made in the roll out plan agreed by the Joint Planning Project.

Ofcom's response and decisions

- 3.12 Ofcom acknowledges the general point that there is still some uncertainty as regards the planning and process of digital switchover. This is inherent in a project of the complexity and importance of digital switchover in the UK. Ofcom considers that the appropriate response, however, is to provide legal and regulatory certainty for all stakeholders by placing the multiplex operators under a formal obligation to broadcast from a set number of sites at DSO in order that all stakeholders can plan ahead with the necessary confidence – Parallel lists of stations have already been included in the DRLs. It is important, in Ofcom's view, to have consistency between the coverage conditions in the DRLs and multiplex licences.

- 3.13 The list of stations from which the multiplex operators will be required to broadcast in order to achieve a certain level of coverage, and associated details (such as powers), will of course need to be periodically updated and reviewed. On balance, Ofcom believes that the benefits of including the list in the licences at this time outweigh any disadvantages.
- 3.14 The regulator does not believe that the coverage obligation in the licence for Multiplex B (held by BBC FTV) should be different to that in the remaining multiplex licences as regards the broad principles underlying it. The insertion of new obligations as regards DTT coverage on the BBC in the Agreement is helpful. Ofcom however has statutory duties to license and regulate Multiplex B. For reasons of consistency and clarity, it makes most sense for all three PSB multiplexes regulated by Ofcom to have a coverage obligation in condition 2 drafted in similar terms.
- 3.15 Ofcom has noted in some responses various requests for clarification. A number of these requests relate to decisions, or work of, Ofcom which will not be complete soon enough for Ofcom to provide this clarification before, in Ofcom's opinion, a DSO coverage obligation must be inserted in the multiplex licences. Ofcom will endeavour to provide clarification where appropriate as soon as possible. But it cannot allow the desirability for this clarification in principle to hold up changes to the coverage condition in the multiplex licences where such an important public project as DSO is at stake. The section of this Statement dealing with Next Steps gives guidance to stakeholders about when and how Ofcom hopes to provide clarification to stakeholders on a number of DSO-related issues.
- 3.16 Some responses helpfully pointed out a number of errors as regards certain details in the draft variations. The regulator has studied these points carefully and corrected the variations to the licences as appropriate. Apart from these changes, however, Ofcom has decided that the variations to the coverage conditions in multiplex licences should be as proposed in the DSO consultation.

Cooperation and coordination with other parties

- 3.17 In view of its implied duty to promote digital switchover, Ofcom proposed including in the multiplex licences an obligation on licensees to cooperate with the main other parties involved in the administration, organisation or implementation of digital switchover in the UK.

Question 2: Are the proposed new provisions relating to cooperation and coordination with other parties concerning DSO, and contained in the annexes to the multiplex licences, necessary, appropriate and proportionate? If not, please explain why and propose alternative wording.

Points made by respondents

- 3.18 Three responses made no objections to Ofcom's proposal. Of these one, from JFMG Ltd (which manages the spectrum allocated for use in programme making, entertainment and related activities), suggested that it might be beneficial for the proposed condition to specifically make a reference to JFMG Ltd, or any other Programme Making or Special Events (PMSE) spectrum

manager, to ensure that their interests are taken account of in planning for DSO.

- 3.19 Other respondents, including the BBC and Digital 3 & 4, suggested that either the condition was not needed, or that the ambit of the condition should be narrowed. They argued that the condition was not necessary because, in the BBC's case, it was already under certain obligations to cooperate with digital switchover because of its new Charter and Agreement, or in the case of other multiplex operators because it was in their commercial and other interests to cooperate, in order to ensure that digital switchover was a success. They claimed the new condition was superfluous because the main terrestrial broadcasters and multiplex holders were all shareholders in DUK – the body charged with managing and marketing DSO in the UK. Their involvement with this organisation was a more effective way to ensure the co-operation of the multiplex operators than a condition in the Ofcom licences. These respondents suggested that the wording proposed by Ofcom was too broad and proposed disproportionate burdens on licensees.

Ofcom's response and decision

- 3.20 Ofcom acknowledges that, to some extent, it is in the interest of the multiplex operators to cooperate with other parties in the move to DSO. The BBC, which controls multiplex B, is subject to new duties in its Charter and Agreement; Channels 3 and 4, which hold the licence for multiplex 2, are obliged to cooperate with DSO through duties already included in their DRLs. SDN and NGW, however, although involved with the planning for switchover through DUK, are not under any parallel obligation, although it is in their commercial interests to a great extent to cooperate.
- 3.21 Having considered the various submissions made to it in response to the consultation Ofcom has concluded that on balance some form of condition should be included in all the multiplex licences to ensure that multiplex licensees cooperate with other parties as regards DSO. As has been pointed out in numerous Ofcom documents, DSO is a complex process. It requires the active involvement of several parties, whose interests are in fact not always aligned, to work together if it is to be completed successfully in accordance with the Government's timetable. Ofcom has an implied duty to promote switchover. To fulfil this duty the regulator needs to ensure it has a backstop power to ensure all relevant licensees – and multiplex operators have a crucial role to play in DSO - cooperate with the process.
- 3.22 Some respondents suggested amendments to the wording for this condition put forward by Ofcom in the consultation in order to narrow its ambit. For example they proposed that the obligation on a licensee to cooperate should only be in respect of "reasonable requests" made by other parties, and that such requests should only "relate directly to the obligation on the licensee in the licence".
- 3.23 Ofcom considered these proposals but decided such limitations were unnecessary. In the regulator's view the proposed condition is already subject to a number of implicit restrictions. If another party involved with switchover made a request for cooperation to a multiplex licensee, which this licensee regarded as unreasonable, the multiplex operator would not automatically be in breach of its licence if it refused to comply. The multiplex licensee could refuse to comply, and then it would be open to any stakeholder to refer the

matter to Ofcom to consider. If the request was unreasonable – for example by not relating to obligations on the licensee, or requiring the licensee to breach the terms of its licence or spend a disproportionate amount of money – this may be a reason for Ofcom to conclude that the multiplex licensee was not in fact in breach. Also, by introducing restrictive language in the co-operation condition in the multiplex licences, this would lead to an inconsistency of wording between the DRLs and the multiplex licences. Ofcom believes that there is merit in consistency, and in a clear presumption – enforceable where necessary by means of a licence condition - that multiplex licensees shall cooperate with all parties involved in DSO in the UK.

Annual report and information relating to digital switchover

- 3.24 The consultation proposed to place a duty on a multiplex licensee to send Ofcom an Annual Report giving details of its compliance with the conditions in the licence relating to the provision of the digital service, and with the other licence provisions related to digital switchover, and of its plan (including budgets and expenditure) to fund the roll out of equipment and/or infrastructure relating to DSO.

Question 3: Are the suggested new provisions concerning an Annual Report and information relating to Digital Switchover contained in the annexes to the multiplex licences, necessary, appropriate and proportionate? If not, please explain why and propose alternative wording.

Points made by respondents

- 3.25 One respondent in a confidential response supported the concept of regular reports to Ofcom but suggested that, in the case of the commercial multiplexes, these reports should in fact be not annual but quarterly. The weight of the responses overall, however, was to oppose the wording put forward by Ofcom because it would impose too onerous a burden on licensees. A number of respondents, including the BBC and Digital 3 & 4, suggested that the wording as proposed was too broad and impractical. It would place reporting responsibilities on the multiplex licensees which would duplicate the obligations of the holders of the DRLs and the work of DUK, and in some cases the information required by the proposed condition would not be held by the multiplex licensees but other parties, e.g. the transmission providers. D 3 & 4, and some other respondents, also considered that Ofcom should not expect a first annual report from any of the multiplex licensees until December 2007, as opposed to December 2006 proposed by Ofcom.

Ofcom's response and decision

- 3.26 Having taken account all the responses, Ofcom considers that the need to be kept informed of licensees' progress towards, and plans for, digital switchover is sufficiently important that a specific duty should be included in the multiplex licences to provide information annually to assist Ofcom. It is, in Ofcom's view, essential that there is regular reporting obligation on the multiplex licensees to inform the regulator as to their compliance with all switchover-related conditions included in the licences.

- 3.27 Ofcom does not, however, wish this regulatory duty to be unduly burdensome. It recognises for example that the multiplex licensees will have different abilities to access information about, and indeed differing responsibilities and interests in, the funding of the rolling out of equipment and/or infrastructure relating to DSO. The regulator therefore decided to take account of comments from respondents and amend the suggested condition to some extent. Ofcom has qualified the requirement for information about the plans for roll out by adding the words “where relevant”. It also recognises that annual reports should not unnecessarily duplicate information provided to Ofcom from other sources. The regulator has therefore decided on additional wording which makes clear that, with Ofcom’s prior approval, a multiplex licensee may fulfil its DSO reporting obligations by means of consolidated or joint reports prepared in liaison with other Ofcom licensees with relevant obligations. Ofcom also amended the draft condition to make clear that the first Annual Report need not be provided until 31 December 2007.
- 3.28 Ofcom has concluded that it is not necessary or appropriate to impose a heavier regulatory burden on the commercial multiplexes, as opposed to the PSB multiplexes, with regard to Annual Reports. If, during the planning and preparation for DSO, Ofcom becomes concerned about the activities or lack of activity of any of its licensees, Ofcom has the power to request information on any relevant subject.

Communications with viewers

- 3.29 At DSO it will be necessary to varying extents, for a procedure to be completed known as “rescanning”. Terrestrial television receivers are currently tuned to receive particular channels at particular frequencies. At switchover these will change and some viewers’ set top boxes will need to be manually retuned. Ofcom envisaged the multiplex operators having a central coordinating role to play in informing viewers about this procedure. To help ensure it proceeds smoothly, Ofcom proposed in the consultation to include in the multiplex licences a duty on the holders to inform viewers about rescanning, and any other viewer actions required at switchover which were appropriate.

Question 4: Are the proposed new provisions relating to an obligation to inform viewers about rescanning and other viewer actions required by switchover contained in the annexes of the multiplex licences, necessary, appropriate and proportionate? If not, please explain why and propose alternative wording.

Points made by respondents

- 3.30 A number of respondents did not think that it would be appropriate for the multiplex operators to have a central co-ordinating role in informing viewers about the re-scans of receiving equipment due to frequency (and service) changes at switchover. First, because multiplex operators do not have a direct relationship with viewers, since their service consists of a packaging together of various programme services provided by others. Second, respondents questioned the practicability of fulfilling the proposed condition. For example the BBC pointed out it would be difficult to explain through on air messaging “how a re-scan can be completed”, as required by part of the

proposed new condition. The steps needed to re-scan a set top box differ as between each manufacturer and, indeed, sometimes between different models from the same manufacturer. Third, the multiplex operators themselves (as opposed to the entities ultimately controlling the licences in some cases) are not established to reach viewers directly, and they do not have the expertise or consumer brand presence to do this effectively. As a result the multiplex licensees could only satisfy the proposed condition of delivering some sort of public information campaign through third parties.

- 3.31 One respondent therefore proposed that Ofcom should not go forward at all with the proposed condition. Others, including D 3 & 4, suggested that instead the condition should commit the multiplex operators to cooperate with DUK on these matters to help ensure that viewers receive a single co-ordinated message. It was also suggested that the inclusion of the duty in the proposed condition to ensure that viewers were “adequately informed” about DSO imposed too high a burden on multiplex licensees.

Ofcom’s response and decision

- 3.32 Having considered all of the responses carefully, Ofcom has decided that it is appropriate to include a condition in the multiplex licences obliging the licensees to ensure viewers are informed about rescanning. Taking account of the arguments put forward by respondents, however, Ofcom agrees that the regulatory burden which this condition imposes should not be disproportionate. Ofcom has decided that, in light of the limited relationship which multiplex operators have with viewers, the proposed condition should be altered to some extent. The licensees will be under a duty to inform viewers, not “adequately” inform them; and licensees will be required to agree with Ofcom their communications plan eighteen months before the Relevant Digital Switchover Date (not the two years originally proposed). But the main change is to confirm explicitly that a third party, such as DUK, may fulfil this duty on behalf of the licensee.

Digital Switchover Date and Timetable

- 3.33 Ofcom proposed to insert a final Digital Switchover Date, and a timetable for converting transmission sites from analogue to digital, in the multiplex licences. This was to help bind the multiplex operators into the DSO project approved by Government, contribute to extending digital penetration in the UK and help ensure switchover is achieved smoothly. The Government confirmed the regional timetable for switchover and its completion in 2012 in a statement in September 2005. The aim of Ofcom’s proposed new condition was to incorporate this timetable into the DTT licences, as Ofcom has inserted it in the DRLs, by reference to the end dates of switchover in each region i.e. the latest date by which switchover must be completed.

Question 5: Are the suggested new provisions relating to the Digital Switchover Date and regional timetable contained in the annexes to the multiplex licences necessary, appropriate and proportionate? If not, please explain why and propose alternative wording.

Points made by respondents

- 3.34 Respondents raised a number of concerns about Ofcom's proposal to include a regional timetable for DSO in the UK in the multiplex licences. The BBC for example considered that it may now be premature to put a defined timetable into the licences, since the detailed order of the transition at switchover has not yet been agreed within DUK. The BBC suggested it might be more appropriate to include a duty on licensees to comply with the pan-industry timetable to be published by DUK with the agreement of the Secretary of State at DCMS, rather than setting out the timetable in the licences. Digital 3 & 4 echoed the concern that the current uncertainty surrounding the regional timetable was not reflected on the face of the proposed variation.
- 3.35 Several respondents were apprehensive that a number of domestic and international transitional issues may restrict the ability of the UK to allow broadcasters to transmit at full power levels on certain frequencies as agreed at the 2006 Regional Radio Conference until other actions have been completed e.g. analogue transmission ceasing in neighbouring countries. Broadcasters, in other words, might due to no fault of their own be unable to transmit at the power levels set out in the Annex of the licences. Concern was also expressed about whether, and if so to what extent, Ofcom might impose sanctions on licensees for failing to comply with the regional timetable when they were not directly responsible.

Ofcom's response and decision

- 3.36 Despite the element of uncertainty surrounding the regional sequence for DSO, it is Ofcom's view that it is essential that all stakeholders, and the broadcasters and multiplex operators in particular, have certainty about the milestones they must achieve in terms of regional switchover. At the moment the multiplex licences contain no obligations whatsoever specifically relating to digital switchover. Ofcom has concluded that, over a year after the government in September 2005 announced its indicative timetable for regional DSO, having inserted an analogous timetable in the DRLs in October this year, it would be inappropriate not to include a similar provision now in the multiplex licences.
- 3.37 The attention of stakeholders is drawn to the statement in the consultation document that the "regulator intends to keep a list of DTT broadcasting stations under regular, probably annual, review as DSO proceeds and the multiplex licences, both PSB and commercial, will be amended accordingly". Ofcom, in other words, is well aware of the need for the detail of the regional timetable, and associated list of DDT broadcasting stations, to reflect developments in DSO planning and to be appropriately flexible as a result.
- 3.38 It would not be appropriate for Ofcom to oblige the licensees to comply with either the pan-industry timetable as published by DUK in accordance with Government approval, or some other confidential timetable maintained by the parties involved with DSO planning. This is for a number of reasons. First, Ofcom has a duty to ensure that it fulfils its statutory obligations as regards switchover. It is very reluctant to measure compliance with these obligations by reference to some process or procedure of which the regulator may not have full knowledge and over which it has limited control. The same point applies to some form of confidential timetable held by the DSO planners. Second, DSO is an important public policy project. Ofcom believes strongly

that there should be as far as possible transparency with regard to the broad framework of the regional timetable, so that all stakeholders (including consumers and manufacturers) can plan ahead with confidence, knowing that Ofcom has inserted appropriate regulatory levers in the relevant licences to ensure compliance with the regional DSO sequence. Third, there should be consistency as between the terms of the DRLs (into which a parallel condition was inserted in October 2006) and the multiplex licences.

- 3.39 As regards potential sanctions to be imposed by Ofcom should a multiplex licensee breach this condition, Ofcom cannot fetter its discretion. The current licence conditions set out certain limitations on Ofcom's powers to impose sanctions for breach of condition, based on statute, and these would apply in the event of any breach. In deciding whether Ofcom found a licensee in breach, and if so what sanctions it might impose, Ofcom would take account of all the circumstances of the case, including the extent of any responsibility of the multiplex licensee for the alleged breach concerned. Any decision of Ofcom in this respect would be subject to judicial review. In Ofcom's opinion, stakeholders should therefore have sufficient comfort that it would exercise its discretion as regards possible sanctions appropriately. Stakeholders, on the other hand, should note that one of Ofcom's purposes in including this condition in the multiplex licences is to help ensure that the licensees do their utmost to ensure that the regional timetable is met, and that DSO in the UK is achieved in accordance with the Government's timetable.
- 3.40 Ofcom has concluded that all stakeholders, and the broadcasters and multiplex holders in particular, must have certainty about the milestones they must achieve in terms of regional switchover; and that including the proposed regional DSO timetable in all the multiplex licences is appropriate in light of Ofcom's implied duty to assist switchover. We note that the Government did not refer to the Channel Islands in their statement of September 2005, but that they are considered likely to switch in 2013. The date for the completion of DSO in the multiplex licences in all UK regions, except the Channel Islands, is therefore 31 December 2012, consistent with the Government's published timetable. Since the Channel Islands are considered likely to switch in 2013, Ofcom has decided to include in the licences 31 March 2013 as the date by which analogue transmission to the Channel Islands must cease.

Digital Terrestrial Broadcasting Stations

- 3.41 This proposed new condition would add an obligation on the multiplex licensees to broadcast from an expanding list of DTT broadcasting stations as DSO takes place on a regional basis. There is an important difference between this obligation as set out in the two PSB multiplexes at switchover (i.e. multiplexes 2 and B); and the remaining three commercial multiplex licences.
- 3.42 Ofcom proposed to include in the PSB multiplex licences a list of 1,154 DTT broadcasting stations and dependent relays set out by reference to the various (Channel 3) regions where digital switchover will take place. The aim is that as DSO proceeds on a region by region basis, each PSB multiplex licence holder will be clear about how its obligation to broadcast from certain stations develops.
- 3.43 As regards the commercial multiplexes, the consultation proposed to include in the licences the same list of 81 sites from which the licence holder shall

broadcast at DSO as binds the licensee currently. If the commercial multiplex operators wished to adopt any additional sites, Ofcom suggested that it is essential that they commit now to any specific extra sites. This is to give certainty to all parties involved with DSO, and allow Ofcom to proceed with its Digital Dividend Review.

Question 6: Is it necessary, appropriate and proportionate to include in the annexes of the multiplex licences the new, proposed conditions setting out details of broadcasting stations? Please comment on the draft wording if you consider if it could be improved.

NOTE TO HOLDERS OF MULTIPLEX LICENCES A, C AND D. Please read paragraph 3.30 carefully and note Ofcom's decision that if the commercial multiplex operators wish to adopt any sites above the current 81 they must commit unconditionally to doing so in writing by the closing deadline for this consultation.

Points made by respondents

- 3.44 This Statement has already summarised objections made by certain respondents to the principle of including a list of DTT broadcasting stations in the multiplex licences at this time; and set out Ofcom's reasons as to why it would be appropriate now to include in the multiplex licences a list of DTT broadcasting stations from which the licensees must transmit.
- 3.45 Some respondents, in view of the current uncertainties surrounding the list of DTT broadcasting stations, requested that there should be a clear acknowledgement from Ofcom that the detail contained in this list should be subject to change at the request of the stakeholders as DSO planning further developed. Some also queried how the list, once included in the licences would respond to certain transitional issues. For example, as a result of the RRC a period of transition has been set where existing analogue frequencies are protected from interference from new digital services. This will require all multiplex operators to restrict interference into neighbouring European countries either until those countries have completed digital switchover or until 2015 at the latest. This may mean for example that temporary operating power restrictions may need to be imposed at certain UK sites.
- 3.46 A number of replies objected to Ofcom's proposal that the commercial multiplexes should commit now if they wished to build out any sites beyond the current 81. One point put forward was that it was necessary for flexibility to be retained for the commercial multiplexes to decide to broadcast from more sites in the future should they wish. An example of the need for such flexibility was if, in the future, some agreement was made whereby content on a particular multiplex needed distribution on a regional basis, and this would require broadcasting from more relay sites than at present. Some of these respondents, in turn, recognised however that any right to add extra sites in the future would need to be subject to the commercial multiplex operators being prepared to pay for any appropriate network upgrades at that time; and to recognition that in the meantime the necessary frequencies might already have been assigned elsewhere.
- 3.47 Another argument put forward was that Ofcom had failed to explain why it was necessary for the commercial multiplex operators to provide a 'unconditional commitment' to build any extra sites above 81 now, particularly

in the view of the fact that these operators could not arguably take a fully informed decision on the issue since they lacked a certain amount of relevant information, e.g. the conclusion of Ofcom's work on the potential introduction of AIP for the broadcast use of spectrum. It was also argued that: the operators did not have sufficient information at present about the costs involved in taking a decision as to whether or not to roll out additional sites; for Ofcom to proceed on the basis set out in the consultation document would be in breach of its duties and regulatory approach; and that the issue had not been addressed satisfactorily in the impact assessment attached to the consultation.

Ofcom's response and decision

- 3.48 Ofcom has decided to include in the PSB multiplex licences a list of 1,154 DTT broadcasting stations and dependent relays set out by reference to the various (Channel 3) regions where digital switchover will take place, as proposed in the DSO Consultation. The regulator believes it is important at this stage to give clarity to all stakeholders about the obligations of PSB multiplex operators to broadcast from certain stations at DSO.
- 3.49 Ofcom has carried out an assessment of whether the adoption of the current frequency plan (which now includes the possible adoption of an additional nine relays) is likely to result in any viewers currently covered by the analogue services losing access to the digital terrestrial versions of these channels at switchover. Our latest analysis suggests that the reliability of digital terrestrial television for these channels should overall be at least as good as now, provided the holders of DRLs agree to adopt the nine extra relays in the south and east of England. Ofcom will therefore be writing shortly to the DRLs holders to inform them of this proposed requirement and how it might be incorporated into their licences. Any relays added to the DRLs would then need corresponding alterations to the PSB multiplex licences. In the meantime, pending the outcome of this correspondence, Ofcom has decided to include in the PSB multiplex licences a list of 1,154 DTT broadcasting stations and dependent relays set out by reference to the various (Channel 3) regions where digital switchover will take place.
- 3.50 As regards future flexibility in the lists (in both the PSB and commercial multiplex licences), Ofcom points to the proposed preamble in the draft variations immediately before the table of digital terrestrial broadcasting stations, which states that "The Licensee is on notice that the information contained in this table will be subject to revision as the planning and international coordination process for digital switchover progresses". It is open at any time for the holder of multiplex licence, or indeed any other stakeholder, to approach Ofcom and ask it to amend the details included in this list. The regulator is determined that there should always be appropriate flexibility in the list to ensure that the process of switchover proceeds as smoothly as possible.
- 3.51 It may not be efficient for Ofcom to go through a formal process of licence variation on every occasion that a minor change may be needed however. Ofcom liaises closely with Digital UK, government and all other stakeholders, and will be pleased to offer guidance, and where appropriate, comfort, to a licence holder on any issue where it may need to proceed on the basis that Ofcom will grant a formal variation to the list in due course. Ofcom will show appropriate flexibility for example as regards the various transitional issues

resulting from the RRC pointed to by respondents to ensure they can be resolved.

- 3.52 As regards the requested commitment for commercial multiplexes to indicate whether they wished to adopt additional sites, Ofcom has decided to confirm in these licences the obligation to adopt the list of transmission sites as set out in the draft licences which were consulted upon i.e. 81 sites. Ofcom however also wishes to confirm that the transmission parameters at each site listed in the Annexes will be subject to periodic review and amendment, in the light of ongoing planning work being carried out by the Joint Planning Project in conjunction with the broadcasters and DUK, and representations from stakeholders.
- 3.53 In addition, Ofcom has taken account of comments and representations received in response to the consultation, suggesting that it should be possible for licensees to increase the number of commercial multiplex sites above 81. In principle Ofcom supports the commercial multiplexes having the maximum coverage at DSO in order to provide the best possible coverage for all DTT services in the UK. We are therefore willing to consider requests in future from the commercial multiplex operators to adopt additional sites beyond the current 81. Ofcom will consider its response to any such requests in the light of all relevant circumstances, including spectrum availability.
- 3.54 In making the current set of variations, Ofcom has noted the various proposed corrections to the lists of stations referred to by respondents.

Coverage obligations of PSB multiplexes

- 3.55 Ofcom decided in its June 2005 Planning Options statement that the DRL holders' coverage duties were likely to be met by them adopting all 1,154 existing transmission sites. As noted above, Ofcom now believes that the DRL holders should adopt an additional nine relays in order for DTT coverage at DSO to be appropriate. Further research about DTT coverage at switchover suggests that it is possible that there may be occasional marginal changes in reliability, up and down, for individual communities, for example depending on weather conditions. However, it is thought unlikely that any community will lose access to terrestrial television services.
- 3.56 This assessment is based upon planning predictions and there is therefore an inevitable margin of error in the analysis. Ofcom considers that it is not acceptable that any community of reasonable size currently covered by analogue transmissions should lose access to terrestrial television on switchover.
- 3.57 In light of further analysis, Ofcom may therefore as necessary propose that PSB broadcasters who are holders of DRLs should be required to adopt a further small number of relays, if this is needed to ensure a reasonable level of service at DSO. Ofcom will be writing shortly to the holders of DRLs, the BBC, and other appropriate stakeholders, to set out its policy on DTT coverage in more detail.
- 3.58 Subject to the adoption of the nine additional relays referred to above, and the possibility of a small number of further relays if required, Ofcom will be minded to confirm to the PSB multiplex licensees at the appropriate time that

they can all adopt the 64QAM transmission mode at switchover. Ofcom will update all DRL and multiplex licences accordingly.

Section 4

Switchover conditions to be included in DTT service licences

Co-operation and co-ordination with other parties

- 4.1 In the consultation, in view of its implied duty to promote digital switchover, Ofcom proposed to include in the DTPS, DTAS and DSP licences various duties relating to DSO. One proposed obligation on licensees was to cooperate with everyone involved in the administration, organisation or implementation of digital switchover in the UK. These parties would include other Ofcom licensees and Digital UK, but in particular the holder of the licence for the DTT multiplex on which the DTT service licensee broadcasts.

Question 7: Are the proposed new provisions relating to cooperation and coordination with other parties concerning DSO, and contained in the annexes to the DTT service licences, necessary, appropriate and proportionate? If not, please explain why and propose alternative wording.

Points made by respondents

- 4.2 A number of respondents, including the BBC and talkSPORT, supported Ofcom's proposal in principle. Certain of these respondents proposed small wording changes to narrow its ambit.
- 4.3 Other respondents however (including Digital 3 & 4, Discovery, Flextech, the Satellite and Cable Broadcasters Group and UK TV), objected to Ofcom's proposal in principle. They argue that: the proposed new condition as regards cooperation to be included in the DTT service licences is too broad in scope and too vague; it is not necessary; and Ofcom did not address in sufficient depth in its impact assessment whether this proposed condition risked imposing a disproportionate burden on licensees. Discovery objected to the fact, for example, that the consultation provided no explanation as to how licensees might be expected to "cooperate in all respects" with other parties. In its view this proposed condition was 'ill-defined and open-ended'. Flextech, likewise, was concerned that the proposed wording included no explicit requirement for requests for co-operation to be justifiable or reasonable. It also expressed concern about being required to comply with requests for cooperation from Digital UK, when this entity does not operate like Ofcom within a statutory framework and in line with published regulatory duties.

Ofcom's response and decision

- 4.4 Ofcom has considered all of these various points carefully. It has, however, concluded that it would on balance be appropriate to include an obligation on DTT service licensees to cooperate with other parties in the process of switchover. It is evident to Ofcom that switchover can only take place smoothly if there is cooperation between all the parties involved, including holders of DTT service licences. Similar obligations have already, or are being inserted in all Ofcom licences related to digital terrestrial television. It would be an anomaly for DTT service licensees to be excluded.

- 4.5 Although Ofcom hopes that it will never be necessary to invoke this particular provision to ensure the cooperation of a particular DTT service licensee, it considers it important to signal to all Ofcom licensees that their cooperation is necessary; and – in appropriate circumstances, should that cooperation not be forthcoming – that it has the necessary regulatory lever to ensure such co-operation is provided. The wording of the proposed condition was intentionally broad to ensure that the condition would capture all likely circumstances in which cooperation might reasonably be required.
- 4.6 It is not, however, Ofcom’s intention that the condition should impose any disproportionate financial or other burden on DTT service licensees or that it could be exploited by other parties to impose unreasonable requests. It is in Ofcom’s opinion implicit in the condition that a licensee can only be made to comply with reasonable requests. Factors to be taken into account in deciding whether a request is unreasonable is whether it would impose a disproportionate financial burden on the licensee affected, and that any request for co-operation should relate to the duties included in the relevant licence. As stated earlier in relation to multiplex licences, if a DTT service licensee considers that any particular request is unreasonable or disproportionate it may seek advice and guidance from Ofcom. Equally, if there is a possibility that a request may impose material additional burdens on a licensee, it may be helpful for the person making it (e.g. Digital UK) to consult Ofcom in advance.
- 4.7 Ofcom considered whether the width of the proposed condition should be narrowed but concluded that the benefits of having consistent wording as between all Ofcom licences relating to DTT outweighed any possible disadvantages there might be in not tailoring this condition to each particular genre of licence. Ofcom has therefore concluded that it is not necessary to include any restrictive wording in the proposed cooperation condition to be inserted in DTT service licensees.
- 4.8 The regulator believes that in all the circumstances its impact assessment in relation to the cooperation condition (and the one concerning communication with viewers) relating to DTT service licences was appropriate. Ofcom considered that it was not necessary or proportionate to include in the impact assessment a detailed and separate analysis of the effect of this condition on DTT service licensees, because Ofcom’s views were provided in relation to the consequences for commercial multiplex operators, and were by extension applicable also to DTT service licensees (see para. A1.20 and A1.21). The consultation set out Ofcom’s thinking in paragraphs 3.31 and 3.32, and underlined that its reasoning in the consultation document should be supplemented by that in the previous consultations and statements in relation to DRLs and DTT coverage⁶.

Communications with Viewers

- 4.9 Ofcom has decided (see paragraph 3.32 above) to include in the multiplex licences a duty on the licence holders to inform viewers and listeners about re-scanning and agree in advance with Ofcom a plan for doing so. Since, however, the direct relationship with viewers and listeners is managed by the DTT service licensees, Ofcom proposed in the consultation that it would also be appropriate to include an obligation in these licences that the holders must

⁶ See footnote 4 above

use their reasonable endeavours to inform viewers and listeners about rescanning.

Question 8: Are the proposed new provisions relating to an obligation to inform viewers/listeners about rescanning contained in the annexes of the DTT service licences necessary, appropriate and proportionate? If not, please explain why and propose alternative wording.

Points made by respondents

- 4.10 Several respondents objected to this suggested condition being included at all in DTT service licences. They argued that: it would be impracticable for many DTT service licensees to fulfil their duties under the proposed condition because for example the licensees provided a national service, whereas the rescanning information may well need to be delivered on a local or regional basis; the duty could be much more effectively fulfilled by Digital UK; the wording of the proposed condition was too vague and broad; and, that there was no proper impact assessment included in the consultation on the impact of the proposed condition on stakeholders.

Ofcom's response and decision

- 4.11 Ofcom acknowledges the force of these arguments concerning the DTT service licensees. The regulator has concluded that it is important that an obligation to ensure rescanning information is given to consumers is included in appropriate Ofcom licences; and that it is sufficient and sensible to insert such conditions in the multiplex licences alone. This is because the multiplex licence holders are all stakeholders in Digital UK and it is expected that this body will carry out the necessary distribution of rescanning information. Taking into account all the circumstances, Ofcom has concluded that it is not necessary or appropriate to include any condition about rescanning information in the DTT service licences.

Section 5

Other issues

Wireless Telegraphy Act licences

- 5.1 In the consultation document, Ofcom confirmed that it was minded to change the holding of the Wireless Telegraphy Act (WTA) licences relating to spectrum used by, and to be used for, DTT broadcasting at DSO. The WTA licences would be held by the multiplex operators rather than the transmission providers.

Points made by respondents

- 5.2 Most respondents did not object to this proposal, but three raised certain issues. They did not believe that Ofcom's proposed move would provide greater certainty or compliance with the frequency allocations of the WTA licences, since the means of achieving compliance would remain with the transmission providers. They also queried whether it was appropriate for the WTA licences to be held by the multiplex operators, when breach of these licences could entail criminal sanctions. In addition, one respondent was unclear whether the proposed approach on the holding of WTA licences was compliant with section 1 of the WTA.

Ofcom's response and decision

- 5.3 Ofcom has considered respondents' comments but does not believe that any compelling arguments have been advanced to suggest that Ofcom should alter its proposal to change the holding of the WTA licences to the multiplex providers at switchover.
- 5.4 Ofcom believes the proposed changes are fully compliant and consistent with the provisions of the WTA. Fulfilment of WTA licence conditions by the third party rather than the holder of the licence is common commercial practice in wireless industries, and already exists in the case of many radio broadcasters. They hold their own WTA licences but their broadcasting transmission requirements are fulfilled by a third party with whom they have a commercial contract.
- 5.5 As far as criminal liability is concerned, Ofcom may prosecute anyone it believes to be acting unlawfully under the WTA and action can not only be taken against the WTA licence holder. Multiplex operators, and for that matter the broadcasters, could be prosecuted now if they were found to have caused a breach of the WTA. In addition, imposing criminal sanctions is only one method of responding to a breach of the WTA⁷ at Ofcom's disposal. This route is normally only pursued when other methods of enforcement have already been tried e.g. issuing a conformity notice to allow inadvertent breaches to be rectified. The concerns expressed by some respondents that multiplex operators may be exposed to criminal sanctions if they were to hold a WTA licences is not, in Ofcom's view, a valid reason to alter the proposal to change the holding of the WTA licences to the multiplex operators at DSO.

⁷ See Communications Act Sections 178 - 184

- 5.6 The proposals are fully compatible with Section 1 of the WTA. Section 1 only requires that all equipment established, installed and used for wireless must be used under the authority of a licence. Since the establishment, installation and use of the equipment for DTT broadcasting will be under the authority of a licence to be held by a multiplex operator, Ofcom's proposal is consistent with the WTA. Many holders of WTA licences rely on third parties to fulfil their duties under these licences e.g. in Business Radio and Private Mobile Radio third parties are subcontracted to build, operate and maintain the networks. After balancing all these factors, Ofcom has decided to confirm its provisional decision that the most appropriate licensing solution for spectrum for DTT broadcasting will be for the relevant WTA licences currently held by the transmission operators to be revoked at switchover and new WTA licences issued to the multiplex operators at switchover.

Move of Channel 5 to a PSB multiplex

- 5.7 Arqiva queried the statement made by Ofcom in the consultation about the prospective move of Channel 5 from multiplex A to a PSB multiplex (section 3.3 of the consultation). Ofcom hopes and expects that Channel 5 should move from multiplex A to a BBC multiplex (multiplex 1 or B) at or before the date when DSO starts in the relevant region/s. Ofcom is waiting for Channel 5 to confirm a date for this move.

Technical Codes regarding Transmission

Points made by respondents

- 5.8 Two respondents made comments about the Technical Codes that are directly or indirectly referenced in multiplex licences.

Ofcom's response and decision

- 5.9 Digital 3&4 and one confidential respondent suggested that the Code of Practice on Changes to Existing Transmission and Reception Arrangements as currently published is targeted only at the protection of viewers of analogue television services during the initial roll-out of digital television. Consequently, they believe that many of the Code's provisions are not relevant to DSO and that the document should be repealed.
- 5.10 One respondent also suggested that, although the contents of the Television Technical Code are largely satisfactory, some parts may require revision in view of DSO. In particular they noted that Specification for Digital Terrestrial Television (which is referred to through the Television Technical Performance Code) should be revised. The respondent felt that it would be helpful to specify that multiplexes will be required to operate at 64QAM at switchover, and that the Specification should be revised to permit the '8k' variant of DTT transmissions and also MPEG-4 encoding for multiplex content.

Ofcom's response and decision

- 5.11 Ofcom acknowledges that the Code of Practice on Changes to Existing Transmission and Reception Arrangements requires amendment to reflect digital switchover. Ofcom will shortly be commencing the discussion of revisions to this document with multiplex operators and broadcasters with a view to re-issuing a revised version by the second quarter of 2007.

- 5.12 The points made about the Television Technical Performance Code and the Specification for Digital Terrestrial Television have been considered by Ofcom.

- 5.13 In general Ofcom is supportive of the adoption of the '8k' variant for DTT transmissions and of the 64QAM mode⁸. The former offers benefits for reception reliability and the latter increased capacity for programme services. Ofcom has yet to adopt a formal position on this issue. The adoption of 64QAM by the PSB multiplexes is likely to be subject to various conditions, including those multiplexes achieving the same level of coverage as analogue television services (around 98.5%). Ofcom has also stipulated that the coverage achieved by the commercial multiplexes post switchover should not fall below current levels (73%).

- 5.14 The Specification for Digital Terrestrial Television permits operation at either 16QAM or 64QAM, although the '8k' variant is not permitted. In principle Ofcom supports all multiplexes being able to operate at 64 QAM post switchover to maximise multiplex capacity (and therefore make most efficient use of the frequencies), subject to coverage obligations. However Ofcom considers that it is not at this time appropriate to remove the option for multiplexes to operate at 16 QAM which would allow licensees the flexibility to increase coverage (at the expense of multiplex capacity) for a given transmitter power.

- 5.15 Ofcom has previously indicated that it supports a transition to the '8k' variant for DTT transmissions and we therefore propose to modify the Specification for DTT to permit operation in the '8k' mode. It is intended that this document will be revised and re-issued by the end of 2006.

- 5.16 A transition to MPEG-4 encoding potentially offers benefits to the digital terrestrial platform, but its introduction would present challenges. The most significant would be the impact on the 6.4 million households that have already adopted digital terrestrial television, but whose equipment can only decode MPEG-2 programmes. Any transition to using MPEG-4 would therefore need to be very carefully planned and introduced and lies outside the scope of this consultation. Ofcom is therefore not able to include MPEG-4 in the Specification for Digital Terrestrial Television at this time.

⁸ Ofcom's Statement on Planning Options for Digital Switchover, published 1 June 2005. See <http://www.ofcom.org.uk/consult/condocs/pods1/main/statement/statement.pdf>

Section 6

Impact Assessment

Introduction

- 6.1 The analysis presented in this Annex, when read in conjunction with the rest of this statement represents an Impact Assessment (IA), as defined by Section 7 of the Communications Act 2003 (the Act).
- 6.2 IAs form part of best practice policy-making and are commonly used by other regulators. This is reflected in Section 7 of the Act, which means that Ofcom carries out IAs where its proposals are likely to have a significant effect on businesses or the general public, or when there is a major change in Ofcom's activities. In addition, Ofcom also carries out IAs for other policy decisions as a matter of course as a means of ensuring that policy-making is informed by an appropriate appraisal of the available options. In accordance with Section 7 of the Act, in producing the IA in this document, Ofcom had had regard to such general guidance as it considers appropriate, including related Cabinet Office guidance.
- 6.3 Economic analysis, such as that presented in this IA can thus provide a valuable tool for evaluating and selecting different options for regulation but other factors, such as public policy considerations, also need to be taken into account. IAs therefore play an important role in policy formulation but they are not determinative.
- 6.4 This IA also discusses the main comments on the draft IA that were made in the submissions that responded to the consultation document in July 2006. Where relevant they have been incorporated into the analysis of the impacts associated with Ofcom's proposals.

Background

- 6.5 The IA takes as a given the fact that DSO will have substantial benefits for the UK. Digital broadcasting creates benefits over analogue broadcasting as a result of the fact that more services can be broadcast in the same amount of spectrum. A digital terrestrial signal, for example, can currently transmit four to eight times as many channels as its analogue equivalent.
- 6.6 An earlier report by Ofcom for the Secretary of State⁹ identified a number of benefits arising from switchover:
- Digital broadcasting allows the release of spectrum for potential use by additional broadcasting services or many new communications services.
 - Switchover would improve the functioning of the UK broadcasting market by easing the entry barriers to the launch of new TV channels
 - More households would be able to receive digital signals through their aerials compared with only around three-quarters today, providing many new TV channels, radio stations and interactive services

⁹ Driving Digital Switchover: April 2004.

- Early switchover would cement Britain's leading position in digital TV services.
- 6.7 There are of course costs associated with switchover e.g. new transmission infrastructure, the need for households to convert their television sets for digital reception but in a previous cost-benefit analysis¹⁰ of switchover, the Government estimated that the net benefits to the UK were in the range £1.5-2billion.
- 6.8 In light of the clear benefits which would accrue to the UK and to consumers from switchover, Ofcom has taken steps – following appropriate consultation - to include specific provisions in the Digital Replacement Licences (DRLs) offered to Channel 3 licensees, Channel 4, five and Teletext to assist in achieving DSO. For instance, the DRLs now include specific obligations on broadcasters in respect of ceasing to transmit in analogue after specific dates.
- 6.9 Against that background, this IA is primarily concerned with assessing, so far as this is possible, the likely impact of including switchover-related conditions in all five multiplex licences and all digital television programme service (DTPS), digital television additional service (DTAS) and relevant digital sound programme service (DSP) licences. In particular there is a focus on the likely impact of varying the licences of the commercial DTT multiplex operators to include conditions which are analogous to those which are included in the DRLs to assist with DSO¹¹.
- 6.10 In discharging its functions, Ofcom's principal duty is to further the interests of citizens and consumers (Section 3(10) of the Communications Act 2003). Ofcom is also required to secure certain objectives. Of particular relevance to this statement are the following:
- the optimal use for wireless telegraphy of the electro-magnetic spectrum
 - the availability throughout the UK of a wide range of electronic services; and,
 - the availability throughout the UK of a wide range of television and radio services which (taken as whole) are both of high quality and calculated to appeal to a variety of tastes and interests.
- 6.11 6.11 As well as the general duty to further the interests of consumers and citizens, the Communications Act 2003 sets out a range of considerations to which Ofcom must have regard, where relevant in the performance of its general duties. A number of these considerations are particularly relevant to this IA. These include:
- The desirability of promoting competition in relevant markets

¹⁰ Cost benefit analysis (CBA) of digital switchover, DTI and DCMS (September 2003).

¹¹ Impact Assessments have previously been carried out for the DRL consultation and statement and also the Planning Options Digital Switchover consultation and statement. They should be read in conjunction with this IA to provide a complete assessment of rationale for the move to DSO.

- The opinions of consumers in relevant markets and of members of the public generally
 - The different interests of persons in the different parts of the UK, of the different ethnic communities within the UK and of persons living in rural and in urban areas; and,
 - The interests of consumers in respect of choice, price, quality of service and value for money.
- 6.12 Taken together Ofcom considers that it is under an explicit duty to promote digital switchover in the UK. In considering the appropriate nature of the proposed conditions to be included in the multiplex licences, Ofcom has had regard, where relevant, to all these obligations.
- 6.13 Sections 2 of the main statement provides a summary of the situation in respect of DTT multiplex operators and holders of DTT service licences and the context for this impact assessment.

Core Proposals

- 6.14 In the July consultation document Ofcom set out two broad sets of options:
- No change from the current situation
 - Including conditions in commercial DTT multiplex licences and DTT service providers which are analogous to those already included in DRLs to achieve DSO.
- 6.15 The set of conditions which Ofcom considered including in the commercial multiplex licences related to:
- The co-operation and co-ordination with other parties
 - Providing an annual report and information relating to Digital Switchover
 - Communications with viewers
 - Setting out the Digital Switchover date and regional timetable
 - Listing the sites from which digital terrestrial broadcasting will take place.
- 6.16 Ofcom also asked the commercial multiplex operators to submit a list of any *additional* transmission sites that they wish to have considered for inclusion in the respective multiplex licences. Ofcom would then consider any such request.
- 6.17 In respect of the DTT service providers the relevant conditions related to:
- The cooperation and coordination with other parties
 - Communications with viewers about rescanning.

Consultation Responses

- 6.18 In respect of the five bullet points of paragraph 6.14, section 3 of the statement has set out the points raised in submissions to the consultation and also sets out Ofcom's response to those points. In general terms, Ofcom is not proposing to modify its proposals in respect of including conditions in the commercial multiplex licences.
- 6.19 Section 3 of the statement also discusses the number of objections that were made in response to the request to commercial multiplex operators to submit a list of additional transmission sites that they wished to have considered for inclusion in the respective multiplex licences. The discussion in section 3 also sets out Ofcom's response to most of the points that were made.
- 6.20 However, one response made a number of points about the way in which this issue had been taken into account in the IA itself. In a confidential response a broadcaster argued that Ofcom had not explained why an unconditional commitment by the commercial multiplex operators was required at this point in time while there was considerable uncertainty over matters such as AIP for the broadcast use of broadcast spectrum and how planning for DSO would otherwise be harmed by deferring this decision until there was clarity on such significant issues. The respondent argued that – as charges for additional spectrum were likely to be passed through to broadcasters – there was likely to be cost-benefit implications on broadcasters that needed to be factored into the IA.

Ofcom response

- 6.21 As set out in section [3], the planning for both DSO and the potential reuse of spectrum released by DSO is a complex and complicated process. Although DSO itself is a process that will run from 2008-2012, certain spectrum planning decisions need to be made before switchover actually begins. These issues are being addressed in Ofcom's Digital Dividend Review (DDR) project. The spectrum that would be needed to allow the number of transmitter sites used by commercial multiplex operators to be increased could have an opportunity cost in that the spectrum could be used for other services which might offer greater increases in consumer welfare. Therefore if commercial multiplex operators wished to increase the number of sites from which they can transmit then that potential use of spectrum would need to be taken into account.
- 6.22 In order to be able to factor in potential alternative uses of this spectrum, Ofcom needed the commercial multiplex operators to be clear about whether they were prepared to commit to rolling out to certain sites so that the issue of the alternative uses of this spectrum could be properly factored into the DDR process. Ofcom did not wish to reserve spectrum for the commercial multiplex operators which was not then used: this could obstruct the development and roll-out of other services.
- 6.23 In terms of the introduction of AIP for broadcast use of spectrum, Ofcom's recent consultation¹² on this issue made it clear that if a decision was made to introduce AIP for television use of spectrum then it would not be applied until 2014. That consultation document also made clear that although it was

¹² <http://www.ofcom.org.uk/consult/condocs/futurepricing/futurepricing.pdf>

possible to set out a methodology for implementing AIP, it was not possible (or indeed reasonable) to set the actual level of charges until much closer the time. Given the timetable for the introduction for AIP, it is likely to be some years before there is the clarity that the broadcaster is suggesting is necessary to carry out the IA in that level of detail. Without the data to carry out a quantitative analysis of the proposals, Ofcom instead has focused on setting out a qualitative assessment of the nature of the proposals.

- 6.24 In terms of there being an impact on broadcasters from the pass through of costs, Ofcom would accept that there could be a knock-on effect on broadcasters that does need to be recognised in this qualitative assessment.
- 6.25 In the original IA, the “No Change” Option made clear that if commercial multiplex operators did not submit wish to roll out beyond the existing 80 sites from which they currently broadcast then post-switchover, after the relevant power increases and adjustments to frequency allocations, the coverage of the commercial multiplexes would still increase from the current level of 73% to around 90% of UK households. A number of consultation responses have clarified that even these power increases and adjustments to frequency allocations will carry with them certain costs so that even a “No Change” option will not be costless for broadcasters. This has also been made explicit in the discussion of the Options set out below.
- 6.26 There were also a number of responses in relation to the proposal for DTT service provider licences to include a condition in respect of communicating with viewers about rescanning. As set out in section 4 of the main statement, a number of responses raised objections to this proposal and as a result Ofcom had concluded that it was not necessary or appropriate to include any condition about rescanning information in DTT service licences. This element therefore no longer is part of the proposals being considered in this IA.

Option 1 – “No Change”

- 6.27 Under this option, there would be on change in the existing DTT multiplex and DTT services licences¹³.
- 6.28 The DSO process would not be de-railed without the inclusion of these conditions in relation to the provision of information, co-operation and communications but it could make efforts by Ofcom to ensure that the industry works together in an effective and efficient way more difficult. For instance, the DTT multiplex operators would be the best placed to have responsibility for communicating to viewers and listeners the need to retune their DTT set-top boxes (STBs): they ought to have the best understanding of how widespread the issue would be, to provide technical help-lines to assist with enquiries; to understand how different STBs function etc. However, without the specific requirement on multiplex operators to provide this service, there would be the need for Ofcom to seek out a third party to provide this

¹³ The licences for the public service multiplexes will need to be modified to include the 1,154 existing sites which are currently used for analogue terrestrial broadcasting in order to ensure that the existing level of coverage is maintained. These lists would reflect those already in the various DRLs and the frequency allocations set out in the relevant Wireless Telegraphy Act licences relating to radio spectrum used for DTT broadcasting.

facility who would in turn have to liaise with the commercial multiplex operators.

- 6.29 In relation to the sites at which digital broadcasting would take place, the licences for the commercial multiplex licences would still include the list of the 80 sites from which they currently transmit. If no additional transmission sites are included in the revised licences, then the operators of the commercial DTT multiplexes would be constrained from increasing coverage beyond the existing 80 sites that are currently specified in their licences.
- 6.30 The “Do Nothing” option nevertheless means that, post-switchover, after the relevant power increases and adjustments to frequency allocations, the coverage of the commercial multiplexes would still increase from the current level of 73% to around 90% of UK households. However, they would then be constrained from increasing coverage any further even where it would be commercially viable for them to do so.
- 6.31 The “Do Nothing” option will also entail commercial multiplex operators incurring certain costs in relation to upgrading equipment to accommodate these power increases and adjustments to frequency allocations. These costs should already be anticipated as part of the DSO planning process although the actual incidence of these costs will be shared between multiplex operators and DTT service providers, depending on the nature of the contracts between these parties. For the DTT service providers these costs would be offset by the benefits that increased coverage could bring in terms of wider access to audiences and consequent increased advertising revenue.

Option 2 – Inclusion of additional conditions

- 6.32 Given the requirement set out in section 215 of the Communications Act 2003 that DRLs must achieve a level of DTT coverage which will be broadly equivalent to that of their present analogue service, Ofcom considers that the inclusion of analogous conditions in the relevant public service licences is an appropriate measure to support the DSO process.
- 6.33 Including analogous conditions in the licences of the public service multiplex operators simply mirrors the obligations that are already in place on the broadcasters and which the multiplex operators would need to work towards satisfying anyway. As a result the proposals set out in this document should not impose any material additional costs on the public service multiplex operators. The rest of this discussion will therefore focus on the impact of the additional conditions to be included in the licences of the commercial multiplex operators and DTT service providers.
- 6.34 The detail of the proposed variations on the commercial multiplex operators is set out in Section 3 of the statement.
- 6.35 Given the nature of the licence variations and Ofcom does not consider that these licence conditions are likely to impose any new material costs on the commercial multiplex operators or DTT service licensees:
- The process of planning DSO already requires multiplex operators to cooperate with one another and to ensure close co-ordination of their technical activities; also, any request for cooperation would be subject to a requirement of reasonableness.

- The provision of an annual report and information relating to DSO should draw on information already being collected by the multiplex operators for their own business management purposes.
 - The inclusion of a final Digital Switchover Date and regional switchover timetable simply replicates the timetable that the Government confirmed in a statement in September 2005.
- 6.36 At the same time, the inclusion of these conditions will help to underpin the DSO process in terms of providing a mechanism for Ofcom and the industry to be able plan and monitor the progress towards DSO.
- 6.37 As referred to earlier, in the *Planning Options for Digital Switchover* statement published in June 2005 Ofcom concluded that the decision to roll-out coverage at additional transmitter sites should be a business decision for the commercial multiplex operators rather than an obligation imposed by Ofcom. Ofcom also suggested that the commercial multiplex operators should be encouraged to agree a common approach to any extension of coverage that they wished to pursue.
- 6.38 In response to the consultation, the commercial operators have written to Ofcom to set out their position in respect of adopting additional sites. That information can now be taken into account as part of Ofcom's work on the Digital Dividend review.
- 6.39 Based on that information, Ofcom does not believe that there is any material difference between the costs that would be incurred by DTT multiplex operators as between Option 1 and Option 2 in respect of roll-out to additional sites. That would mean that there is no material difference in the potential impact on broadcasters from the pass through of the costs associated with power increases and adjustments to frequency allocations.

Conclusions

- 6.40 Based on the above discussion and the fact that much of these issues have already been covered in previous consultations, Ofcom has concluded that Option 2 would be an appropriate and proportionate response.