

## **Response by the Broadcasters Liaison Group to the Review of the Ofcom Rules on Party Political and Referendum Broadcasts and Proposed Ofcom Guidance for broadcast coverage of elections**

The Broadcasters' Liaison Group (BLG) exists to provide a forum through which representatives of those broadcasters that make airtime available for party political and referendum broadcasts (PPRBs) discuss the criteria each broadcaster applies in making decisions about how that airtime is made available and used. The BLG also provides a means for the political parties to communicate with broadcasters collectively rather than having to engage in dialogue with each one individually.

Membership of the BLG comprises the BBC, ITV plc, stv, UTV, Channel 4, Channel 5, S4C, BSkyB, Absolute radio and Classic FM. The Electoral Commission is invited to attend BLG meetings in an observer capacity.

The BLG would not normally respond to an Ofcom consultation of this nature, but would leave it to individual BLG members (who are indeed responding on many of the issues about which Ofcom is consulting). However, we believe it is more appropriate for the BLG to respond collectively about one part of the consultation: the proposed obligations to be placed on local television services.

The BLG has a number of concerns about Ofcom's proposals:

- That a disproportionate burden is being proposed for companies with resources far more limited than those of the broadcasters that currently carry Party Political and Referendum Broadcasts (PPRBs)
- That some specific issues arise in respect of local television services which do not appear to have been addressed by Ofcom
- That a role may be envisaged for the BLG in respect of local television services that it is not in a position to perform.

We address each of these issues in turn.

### Are the proposals disproportionate?

The BLG is concerned that requiring local television stations to broadcast a large number of PEBs, PPBs and RCBs when they are in their start-up years and operating on very limited resources could pose a disproportionate regulatory burden on them that might bring the whole PPRB system into disrepute.

Our concern is driven in part by our experiences of dealing with the political parties that qualify for broadcasts under the current rules, especially at election time. We regularly experience logistical problems caused by late delivery and non-compliant content. Such problems are likely to be magnified and harder to resolve for the new

local television licensees, as they will have fewer resources and potentially more broadcasts than current BLG members.

If Ofcom's proposals as they stand are implemented, new local television services will transmit more PPRBs than any other channel. They will be expected to broadcast PEBs at General Elections, at European Elections, at local council elections, and (where appropriate) at elections to devolved assemblies, at mayoral elections and at Police and Crime Commissioner (PCC) elections. They will also be obliged to carry non-election PPBs and, where appropriate, RCBs.

The obligations proposed for local television services are greater than those imposed on any other public service broadcaster. BBC One, BBC Two, ITV1 and S4C are not expected to broadcast PEBs at mayoral elections (other than elections to the Greater London Authority) or at PCC elections. Channel 4 is obliged to broadcast PEBs only at General Elections, plus UK-wide RCBs; Channel 5 only broadcasts General Election PEBs, European Election PEBs and UK-wide RCBs; and BBC Three and BBC Four do not broadcast any PPRBs.

We fear Ofcom may have over interpreted government policy. Ofcom's consultation document says "The Government made clear its policy preference for the new local television services to carry PEBs, PPBs and RCBs" and refers to paragraph 20, page 16 of *Local TV: Making the vision happen*<sup>1</sup>. But the document quoted says only "The draft legislation will require Ofcom to insert a licence condition that local TV services must carry party political broadcasts (PPBs)"<sup>2</sup>.

The legislation approved by Parliament simply adds local television services to the existing list of services subject to section 333 of the Communications Act 2003, comprising public service TV channels and national radio services<sup>3</sup>. It does not delineate which broadcasts such services should be obliged to carry. Indeed, Ofcom has considerable flexibility to decide which services are obliged to carry which types of PPRBs; the Act says explicitly "Rules made by Ofcom for the purpose of this section may make different provision for different cases"<sup>4</sup>.

Therefore, we believe it is entirely within Ofcom's discretion to decide which PPBRs are most appropriately carried by the new local television stations. In reaching its decisions, Ofcom should take into account the administrative burden involved in carrying PPRBs and the limited resources available to local television services.

One approach Ofcom might adopt would be for each broadcaster to carry those PPRBs best suited to its transmission configuration. So BBC One, BBC Two and ITV1 transmit UK-wide, national and regional broadcasts; S4C transmits broadcasts specific to Wales; Channel 4 and Channel 5 transmit UK-wide broadcasts only; and local TV stations carry only broadcasts related to elections and referenda taking place in their transmission footprints.

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<sup>1</sup> Ofcom consultation document, paragraph 2.9

<sup>2</sup> DCMS, *Local TV: Making the vision happen*, paragraph 20

<sup>3</sup> Local Digital Television Programme Services Order 2012, s14

<sup>4</sup> Communications Act 2003, s 333(4)

Such a stipulation would not prevent local television services carrying more PPRBs than those stipulated in Ofcom's Rules, should they so choose. This happens already with existing broadcasters. For example, at General Elections Sky News shows all PEBs, although it is under no obligation to do so; while Channel 4 and Channel 5 both undertake to show PEBs from parties standing in one-sixth of the seats in Great Britain, even if they do not meet Ofcom's qualifying criteria of standing in one-sixth of the seats in England and one-sixth of the seats in Scotland and one-sixth of the seats in Wales.

We believe the obligation as to which PPRBs local TV stations must show should be set at a modest and manageable level. They can show further broadcasts if they so choose.

### Issues specific to local television

The system of PPBs, PEBs and RCBs has been developed in the context of broadcasters which can reach the entire audience for a series of broadcasts (such an audience may be UK wide, or constitute one of the four nations of the UK, or cover a region such as London). However, by their nature local television services have transmission footprints which are not coterminous with the electoral areas involved – whether such elections are local or national – and in addition many local service will be available only on DTT and therefore are likely to be present on the main TV sets of less than half the homes they cover.

We think this may raise issues about the balance and impartiality of such broadcasts that do not seem to be addressed in Ofcom's paper. These include:

1. Where there is a discrepancy between the footprint of local TV stations and electoral boundaries, there might be unfairness because voters in one part of an electoral area see PEBs and others do not. If there is a different demographic profile (and hence differential propensity to vote for one party) in the part of the electoral area where PEBs are shown, and the presence of PEBs leads to greater awareness that an election is taking place, the presence of PEBs could impact on that election's outcome.
2. In General Elections, the transmission footprint of some local television stations may contain a disproportionate number of senior politicians from one party (for example, the constituencies of four current members of the shadow cabinet<sup>5</sup> are covered by the putative Liverpool local television service). For a local station to broadcast one or more national PEBs in a general election that featured such senior figures could represent a lack of balance by that broadcaster. Such lack of balance would not apply to a national broadcaster, as a concentration of senior politicians of one party from one part of the UK would be balanced by other parties' deployment of political leaders from other parts of the UK.

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<sup>5</sup> Andy Burnham, Angela Eagle, Maria Eagle, Stephen Twigg

3. Ofcom's proposal that local television services should replicate the national allocation of broadcasts may be unfair in the context of some local transmission areas. For example, the putative Brighton local television service covers roughly five Westminster constituencies<sup>6</sup>, four held by the Conservatives and one by the Greens. At the next election, broadcasters covering the UK and England might conceivably follow the 2010 allocations (which included five broadcasts each for the Conservatives and Labour, four for the Liberal Democrats and one for the Greens), but it is hard to see how this would be a reasonable allocation for the Brighton television service to adopt.

### The role of the BLG

Ofcom proposes that it will "hold discussions with the BLG to discuss the possibility of local television involvement in the BLG. We believe such a move would enhance communication and understanding between the local television sector and the political parties and minimise potential disputes in this area"<sup>7</sup>.

We are concerned that Ofcom may be overstating the role the BLG might play in assisting local television services to comply with the obligations it proposes. The BLG is not a legal entity and membership of it is voluntary. It exists because the current broadcast members believe it provides a useful forum for exchanging views and for communicating with the political parties at national level.

Membership of the BLG is open to all broadcasters who are obliged, or wish, to show PPBRs, and all local television services would be welcome to join it. However, the BLG is not equipped to facilitate the transmission of broadcasts by local television stations. And for Mayoral elections outside London and PCC elections, which no present BLG member is obliged to transmit, it would be for local television services to make arrangements and decide allocations, following discussions and consultations at national level.

### Conclusion

The BLG is concerned that Ofcom's expectations of the level of obligations it expects of local television stations is not realistic; and that it has not thought through all the possible ramifications of what it is proposing. We would be happy to discuss with Ofcom how its proposals might be revised.

Broadcasters' Liaison Group, January 2013

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<sup>6</sup> Arundel & South Downs, Brighton Kempton, Brighton Pavilion, Hove, East Worthing & Shoreham

<sup>7</sup> Ofcom consultation document, paragraph 3.67