



OFCOM SUBMISSION

Proposal for Community Multiplexes ***Putting community first***

incorporating a response from United for Local Television (“ULTV”) to the Office of Communications (“Ofcom”) consultation: *“Digital dividend: the 600 MHz band and geographic interleaved spectrum – Consultation on potential uses”* published 18 February 2010

Introduction

1. Since Ofcom was formed in 2003, ULTV members have argued for spectrum access to be reserved for public service channels with a focus on local communities (“local TV”). In 2007, ULTV was formed as an umbrella group bringing together advocates of local TV from the commercial and community media sectors.
2. Despite some constructive dialogue in recent times, ULTV believes that Ofcom’s general approach to local TV has been to consider it as an adjunct to other consultations, if at all, and typically as a result of external pressure rather than any enthusiasm. ULTV regrettably sees no signs that Ofcom’s consultation on the 600 MHz band and geographic interleaved spectrum (the “Consultation”) is an exception.
3. The Consultation re-affirms Ofcom’s commitment to its so-called “market-led” approach to interleaved spectrum, stating:

“We do not believe developments over the last two years suggest we should modify this approach...or there are new risks of market failure that would justify further intervention.”
4. ULTV finds this statement surprising in light of repeated assurances made by Ofcom to address the concerns raised by ULTV. ULTV believes Ofcom’s existing policy is irrational and with no prospect of leading to efficient outcomes. ULTV believes Ofcom has systematically:
 - dismissed the evidence at its disposal;
 - failed to take account of concerns raised;
 - subjected its policy to no reasonable analysis; and
 - ignored its statutory duties.
5. ULTV believes Ofcom has a duty to consider all serious policy options in consultation with interested parties.
6. In this submission, ULTV is pleased to expand further on its proposal for suitable interleaved frequencies to be awarded to provide digital terrestrial television (“DTT”) multiplexes designed to serve the interests of a geographically-targeted locality (“Community Multiplex” operations).¹
7. This document is intended to supplement and be considered alongside other written and verbal submissions made to Ofcom by ULTV. In particular, ULTV draws attention to its joint response with the Community Media Association (“CMA”) to Ofcom’s consultation on its Draft Annual Plan 2010/11 which set out a detailed case for Community Multiplex licensing.² To minimise repetition, ULTV requests these two documents are read together.
8. ULTV is concerned that UK³ citizens are amongst the least well served in the democratic world for access to high quality local news and information from television. This submission sets out why ULTV believes the promotion of strong

¹ ‘Interleaved’ spectrum re-uses UHF frequencies which are used on a primary basis by the six UK-wide DTT multiplex operators.

² ULTV/CMA (February 2010), *ULTV and CMA response to Ofcom Draft Annual Plan 2010/11*, ULTV/CMA: Sheffield: <http://www.ofcom.org.uk/consult/condocs/draftannplan1011/responses1/ULTVCMA.pdf>

³ Unless the context otherwise requires, references to “UK” within this report refer to the United Kingdom of Great Britain and Northern Ireland and, where relevant, the Crown Dependencies

communities (a cross-party political priority) deserves due consideration by Ofcom's spectrum policy group.

Putting community first

9. ULTV believes that Ofcom's existing policy for the release of interleaved spectrum should not be allowed to proceed. Ofcom has said it will auction a small quantity of interleaved frequencies on a geographic basis "*suitable but not reserved for local television*".⁴ ULTV believes a cash auction process will fail to protect the interest of the local communities intended to be served by these frequencies.
10. Ofcom's stated policy is to auction the interleaved spectrum most suitable for local TV in a largely unregulated manner with no 'use it or lost it' or other positive licence conditions attached. Under this so-called 'market-led' approach, spectrum gatekeepers would be at liberty to control all of the frequencies required by prospective local TV operators. This approach means monopoly gatekeepers would be free to deny local TV operators access to spectrum on fair, reasonable and non-discriminatory ("FRND") terms.
11. Ofcom appears to place its faith in spectrum gatekeepers acting in the public interest rather than their own commercial interests. ULTV regards this approach as irrational. ULTV believes Ofcom should place its faith in local communities to provide the services they wish to receive – not in under-regulated spectrum gatekeepers.
12. ULTV is opposed to allowing spectrum gatekeepers to maximise profits by holding service providers to ransom in local markets. ULTV believes that local multiplexes should be operated on a not-for-profit basis so that DTT service providers contribute only to the costs of operating a multiplex – not to the profits of gatekeepers exploiting their dominant status in the supply of local spectrum.
13. Ofcom wrote to concerned MPs in 2008 stating:

*"It is open to local operators now to prepare their plans to access the spectrum directly via the auction of geographic-interleaved packages or to seek capacity on a digital terrestrial multiplex as a commercial transaction with a multiplex operator."*⁵
14. It could be argued that under-regulated monopolies are rarely in the public interest but least of all when the monopolist is granted the power to hold society to ransom over such public policy objectives as the promotion of informed democracy and active citizenship.
15. ULTV appeals to Ofcom to wake up to the devastating impact of its existing policy. ULTV expects Ofcom to put the interests of local people before the interests of spectrum gatekeepers seeking to make supernormal profits at the expense of society.
16. ULTV proposes Ofcom develop a new policy for the release of interleaved spectrum which places the interests of the communities intended to be served by interleaved spectrum first – not last.

⁴ Ofcom (December 2007), *Digital Dividend Review – A statement on our approach to awarding the digital dividend*, Statement, Ofcom: London: <http://www.ofcom.org.uk/consult/condocs/ddr/statement/statement.pdf>

⁵ Letter from Ofcom's Head of Public and Political Relations to Members of Parliament who signed early day motion 1013 (copy available on request)

Failure of consultation process

17. ULTV continues to have severe concerns regarding the manner in which Ofcom purports to consult on the use of interleaved spectrum.
18. This Consultation is to be found within the “Radiocommunications” section of the Ofcom website. It seems reasonable to ULTV to suggest that many local public service providers, community organisations and voluntary groups are unlikely to be inspired to respond to a consultation entitled “*Digital dividend: 600 MHz band and geographic interleaved spectrum*”. However, these are the very groups who potentially have the most to lose from Ofcom’s existing policies.
19. The Consultation was published with no public stakeholder briefing. ULTV regards the Consultation as an extremely technical document unlikely to be comprehended by many prospective spectrum users. ULTV expects Ofcom’s considerable resources to be deployed to provide consultation documents capable of being understood by interested parties.
20. ULTV believes that if Ofcom wishes to engage in genuine dialogue and discussion to understand the demand for spectrum it must reach out beyond its usual consultation mechanisms. If Ofcom looks overseas it will find examples of local TV stations supported by local authorities, universities, public service providers, community radio stations and citizen groups – the types of groups which ULTV believes are unlikely to respond to this Consultation.
21. ULTV is confident that there are many civil society groups who could benefit from providing content on Community Multiplexes if capacity was available to them on fair and reasonable terms.
22. Even those civil society groups who participated in the original ‘digital dividend’ consultation process widely reported they perceived their views to be ignored – with Ofcom appearing to demonstrate a closed mind to almost all of the arguments presented. ULTV regards it as unacceptable for Ofcom policy to reflect the commercial interests of spectrum gatekeepers rather than the interests of community groups seeking to build a stronger society.
23. Ofcom trusts that this approach will not persist and, when it comes to further consultations and the ultimate award of interleaved spectrum lots, Ofcom will use all reasonable endeavours to implement a simple, straightforward and fair licensing process. ULTV expects Ofcom to encourage local communities to participate – and not be sidelined – in a process which could have lasting consequences for community cohesion, social inclusion, lifelong learning, local democracy and citizens’ participation.

The dangers of spectrum gatekeepers

24. ULTV believes that Ofcom should use all reasonable endeavours to prevent a spectrum ‘land grab’ by speculators seeking to prioritise their own shareholder interests.
25. ULTV believes that for Ofcom to allow the interleaved spectrum suitable for local TV to be controlled by profit-maximising gatekeepers would be in direct contradiction of its two principal duties, as set out in the Communications Act 2003:
 - to further the interests of citizens in relation to communications matters; and

- to further the interests of consumers in relevant markets, where appropriate by promoting competition.
26. ULTV believes that there is a fundamental dichotomy between the interests of spectrum gatekeepers and the interests of citizens and consumers.
 27. ULTV regards the spectrum gatekeeper business model as a form of legalised theft. Under this model, any television or radio station wishing to use spectrum to provide services meeting public demand must first agree to pay a premium rent to a gatekeeper who controls spectrum resource. The gatekeeper did not create this spectrum – they simply hold it with a view to maximising their own profits.
 28. The business model of spectrum gatekeepers is simple – charge as much as they can to operators seeking to deliver content services which are valued by audiences and advertisers. Gatekeepers have one policy – extort rents which are as high as possible and, at the first opportunity, then jack up rents again. If necessary, gatekeepers are often happy to keep some or even all spectrum idle in order to control supply and maximise rental yields.
 29. ULTV believes that spectrum gatekeepers make no genuine constructive contribution to the betterment of society – their profits are not the result of their own ingenuity of enterprise. In ULTV's view, spectrum gatekeepers are little more than parasites – taking something which nature created and which is morally the property of the public (spectrum) and then using it to hold society to ransom. Spectrum gatekeepers exist in order to suck money out of service providers to feed their own lust for supernormal profits.
 30. Spectrum gatekeepers are the modern equivalent of feudal landlords getting rich at the expense of peasant farmers. However, at almost every available opportunity Ofcom appears to have adopted policies on local TV which put the interests of spectrum gatekeepers before the interests of programme-makers seeking to contribute constructively to society, rather than simply abuse society.
 31. Ofcom claims that it has adopted a 'market-led' approach to spectrum. ULTV believes that, in truth, this is simply a market-power led approach which bears no resemblance to any mainstream economic theory.
 32. ULTV is concerned that Ofcom has, in practice, ceased to be an effective regulator of spectrum gatekeepers and instead become their champion. It cannot have escaped Ofcom's attention that the last UK public authority to champion the benefits of light-touch regulation contributed to the worst financial crisis since the Great Depression. ULTV believes that Ofcom's apparent enthusiasm for the spectrum gatekeeper business model is an abdication of its responsibilities to citizens and consumers.

The case for intervention in local media is accepted by Ofcom

33. ULTV regards Ofcom's 'market-led' approach to regulation of local spectrum markets as naive and irresponsible – based on a superficial analysis which bears no objective scrutiny. ULTV believes that simply allowing the spectrum most suitable for local TV to be auctioned to the highest bidder cannot meet the public interest Ofcom is charged with protecting.
34. In public forums Ofcom repeatedly seeks to portray advocates of local TV as old-fashioned state interventionists. ULTV regards this caricature as absurd. It is Ofcom which has passionately argued that intervention to support news programming in the

nations, regions and localities is required given “*the democratic value of alternative voices and the low likelihood of commercial provision.*”⁶

35. According to Ed Richards, Chief Executive of Ofcom, up to £100 million per annum of public money is urgently required to maintain news programming in the nations, regions and localities of the UK:

“We can no longer afford to put a resolution to regional television news on hold... Unless we act soon, a diverse supply of high quality news provision will slip away. It is as simple as that.... So is it unrealistic to pitch for up to 100 million of new money in the current climate?...in an uncertain environment we can be as certain as its possible to be about one thing: without some form of intervention television news for the nations and regions outside the BBC will not survive... This would be a dramatic loss to the citizens of the UK... It’s time now to take this idea onto the next stage. Not to do so would be an historic missed opportunity.”

36. ULTV finds it extraordinary that Ofcom accepts that there is a high risk of under-supply in local and regional programming but refuses to conduct a single dedicated consultation on the enabling policy options to address this market failure. Instead, Ofcom appeals to government to be given £100 million per annum of public money to intervene in the market for local and regional news provision.

37. This is not the only intervention Ofcom has proposed in recent years to address market failure in broadcast provision. For example, Ofcom’s first statutory review of public service broadcasting recommended a new “*Public Service Publisher*” to provide (inter alia) “*local and communities services*” at a cost to the taxpayer of “*around £300m a year*”.⁷

38. What is more, Ofcom has proposed even more intervention – one intended to address the failure of its own spectrum-auction process to take account of any social gain criteria. According to Ofcom:

*“the best intervention option...would be to provide direct funding which local television operators can use to purchase...access to DTT multiplex capacity...”*⁸

39. Ofcom proposes to require local taxpayers to ‘buy back’ spectrum from monopoly gatekeepers – although Ofcom appears to propose this solution with no attempt to consider its legal or other practical costs and risks. ULTV has consistently pointed out that requiring the taxpayer to ‘buy back’ spectrum at an inflated premium (allowing a spectrum gatekeeper to enjoy a windfall gain at the expense of the public) would be an absurdly inefficient use of public funds.

40. ULTV is not aware of any democratic country that argues that local content providers should only be able to gain access to major broadcasting platforms if they can out-bid national content providers. If Ofcom were to adopt such an approach to UK radio it could lead to much of the local radio sector closing overnight.

⁶ Ofcom (April 2008), *Ofcom’s Second Public Service Broadcasting Review - Phase One: The Digital Opportunity*, Consultation, Ofcom: London: http://www.ofcom.org.uk/consult/condocs/psb2_1/consultation.pdf

⁷ Ofcom (February 2005), *Ofcom review of public service television broadcasting Phase 3 – Competition for quality*, Consultation, Ofcom: London: <http://www.ofcom.org.uk/consult/condocs/psb3/psb3.pdf>

⁸ Ofcom (December 2007), *Digital Dividend Review - A statement on our approach to awarding the digital dividend*, Annexes, Ofcom: London: <http://www.ofcom.org.uk/consult/condocs/ddr/statement/ddrannex.pdf>

41. Consistently and without a hint of irony, Ofcom refers to the lack of local TV provision in the UK as justification to gift free spectrum to local radio. For example, according to Ofcom:

“Radio allows for the expression of local viewpoints in a way that reaches far more people than a local website does and with a far greater level of access to express different viewpoints than the hour or so a day of regional television, which covers bigger areas and rarely engages viewers directly in debate. As such, access to the airwaves is important and it is in the public interest for there to be a plurality of such access to ensure that different viewpoints can be heard.”⁹

42. ULTV notes that direct public subsidy to maintain regional news on Channel 3 is far from being the only broadcast intervention championed by Ofcom. For an extended period Ofcom has argued that new subsidy is desperately required for Channel 4:

“...(Channel 4’s) reserves could be used to sustain its public service investment to around 2010, but certainty about its long term role and funding is now a pressing priority. The principal choices to address its funding deficit are increasing its regulatory assets....building its scale by transferring some or all of BBC Worldwide to Channel 4....providing direct funding through the switchover surplus in the licence fee, an industry levy or direct taxation.”¹⁰

43. ULTV notes all of these interventions are proposed by Ofcom to supplement the BBC which itself constitutes an annual £3 billion intervention in the media marketplace.

44. ULTV considers that for Ofcom to seek to characterise the debate about local TV as a ‘free market’ approach against an ‘interventionist’ approach is entirely mistaken. ULTV believes the question for serious policy makers is not whether to seek to enhance and protect a diverse range of citizens voices in local communities but, rather, what mix of policies are likely to be the most moderate, proportionate and effective to open up the market and enable providers of local news and information to flourish on digital platforms.

45. ULTV believes that Ofcom cannot sensibly argue that £100 million direct annual subsidy to maintain regional news on Channel 3 would be a moderate intervention but that reserving DTT capacity for new providers of local news and current affairs should be regarded as disproportionate.

46. ULTV has always accepted that local TV may not be the profit-maximising use of spectrum. ULTV does not criticise multiplex operators for seeking to maximise profits for their shareholders. ULTV’s criticism is reserved for Ofcom for allowing landlords to effectively behave as racketeers without fear of any repercussions. ULTV believes Ofcom has a statutory duty to protect access to spectrum for local content producers – not create an obstacle in the form of unregulated gatekeepers.

47. Ofcom has the opportunity to licence new localised multiplexes across much of the UK potentially delivering a wide range of content – local programming, children’s programming, arts and culture. Instead, Ofcom seems content to allow this spectrum to be auctioned to gatekeepers free to extract monopoly rents.

⁹ Ofcom (April 2007), *The Future of Radio The future of FM and AM services and the alignment of analogue and digital regulation*, Consultation, London: Ofcom

¹⁰ Ofcom (September 2008), *Ofcom’s Second Public Service Broadcasting Review – Phase 2: preparing for the digital future*, Consultation, Ofcom: London: http://www.ofcom.org.uk/consult/condocs/psb2_phase2/psb2_phase2.pdf

48. ULTV is confident that putting in place an effective licensing regime for local TV will deliver a diverse range of original content in the UK's nations, regions and localities (both news and non-news programming) and without the significant costs, risks and distortions associated with Ofcom's alternative proposed interventions.

A rational alternative

49. ULTV believes there is a rational alternative to Ofcom's market-power led approach to the spectrum suitable for local TV. It is an approach broadly consistent with (and in ULTV's view learning from) Ofcom's established approach to the licensing of digital radio ("DAB") multiplexes, DTT multiplexes and commercial and community radio.
50. ULTV maintains that dominant spectrum gatekeepers must not be permitted to hold community-based service providers to ransom. If this were to happen, the result would be a likely transfer in value from UK citizens to private companies as spectrum is withheld from local and community media groups until a monopoly rent is extracted.
51. ULTV appeals to Ofcom to act honourably in the public interest and towards its statutory duty to secure the optimal use of spectrum. ULTV appeals to Ofcom to ensure local TV is guaranteed access to spectrum on fair regulated terms. Wherever practical, ULTV proposes that Ofcom reserve at least one 'in group' interleaved frequency for a Community Multiplex.
52. Under this proposal, Ofcom would award a Community Multiplex licence to the group with the most convincing commitments to serve the whole community in a locality. Local programme-makers would not be forced to pay a premium rent for the right to broadcast but would pay a fair rent based on the real costs of running a local multiplex. Services would be selected based on the contribution they make to society – not just the level of rent they are willing to pay to a monopoly gatekeeper.
53. ULTV believes that this model would open up access to the DTT platform to a range of socially-valuable services which are unwilling or unable to pay the premium rents imposed by unregulated gatekeepers. For the first time, local producers in virtually all parts of the UK would be able to gain access to the UK's number one television platform – DTT – allowing them to invest in the provision of high quality content for their own communities.

Opportunity cost analysis

54. ULTV is confident Ofcom will agree there is little or no 'opportunity cost' associated with ULTV's proposal for the licensing of Community Multiplexes.
55. In the past, some have sought to suggest that demand from programme-making and special event users ("PMSE") will often make it difficult for local TV to gain access to interleaved spectrum. ULTV is also aware of occasional suggestions that interleaved spectrum will also be needed for as yet unknown and unspecified applications other than PMSE or DTT.
56. The problem with these arguments is that, in the vast majority of the UK, there is a large surplus of interleaved spectrum. According to Ofcom:

“We have since carried out further work that suggests actual availability is significantly higher than we indicated in January 2008 and will be sufficient to more than satisfy historic peak demand.”¹¹

57. Despite the widespread availability of interleaved spectrum, often there is a shortage of good frequencies which are ‘in group’ with local rooftop aerials and, therefore, suitable for additional DTT services with reasonable coverage.¹² This is because the frequencies used by DTT multiplexes cause interference to each other and cannot be re-used without careful planning and coordination on a UK and international basis.
58. ULTV believes there can be no rationale for any non-DTT application to require access to ‘in group’ frequencies where there is a large surplus of other interleaved frequencies which remain unused.¹³ ULTV argues that any suggestion there is a material opportunity cost to reserving ‘in group’ spectrum for DTT is deeply disingenuous. On the contrary, there are good reasons to imagine that non-DTT users would generally wish to avoid ‘in group’ frequencies to minimise the risk of interference to DTT services.
59. ULTV is confident Ofcom knows all this. That is why ULTV believes Ofcom’s so-called ‘market led’ approach to the release of the ‘best’ interleaved frequencies (i.e. the best frequencies for DTT) is no more than a euphemism for allowing unchecked gatekeepers to monopolise scarce spectrum and then benefit from the regulatory freedom to abuse their resultant market power.¹⁴
60. The main argument Ofcom has used against reserving any capacity in the interleaved spectrum for local TV is that the ‘opportunity cost’ of any such intervention would be unacceptably high. According to Ofcom, reserving just 25 interleaved frequencies for local TV could have an opportunity cost of up to £400 million over 20 years:

“The relatively significant opportunity costs of such an intervention, at around £400m, lend weight to this assessment...”¹⁵

61. Ofcom’s analysis of the opportunity cost of reserving access to interleaved spectrum for local TV was conducted in 2007 and based, in ULTV’s view, on a series of mistaken assumptions. ULTV believes it would be unreasonable for Ofcom to now make any policy decision on the basis of this analysis. The opportunity cost of reserving a part of the interleaved spectrum for local TV cannot possibly be high if the

¹¹ Ofcom (April 2010), Programme-making and special events – Future spectrum management, access and availability, Interim Statement, Ofcom: London: <http://www.ofcom.org.uk/consult/condocs/bandmanager09/statement/statement.pdf>

¹² ULTV acknowledges it may be possible to stretch the definition of ‘in group’ in certain circumstances beyond just one aerial group. ULTV finds it difficult to respond to a consultation on how best to use interleaved frequencies prior to knowing which frequencies are available, how many, in what areas, at what power level and with what restrictions.

¹³ ULTV is a strong supporter of the development of mobile broadband (and indeed other wireless applications including mobile TV). However, ULTV notes that no credible party has ever suggested using ‘in group’ interleaved frequencies for mobile broadband. ULTV understands there is widespread agreement that:

- mobile broadband would not be compatible with the requirement to protect in-band DTT use;
- mobile broadband applications will not develop using frequencies which are not harmonised across Europe; and
- even in the implausible prospect either of the above issues were resolved there would be likely to be a plethora of more suitable out-of-group interleaved frequencies available (as well as much more suitable spectrum in other bands).

¹⁴ ULTV notes that, whilst claiming to favour an “application and technology neutral” approach to ‘in group’ frequencies, in Manchester and Cardiff frequencies were released with conditions which specifically excluded “the right to use the spectrum for services other than DTT”. This suggests Ofcom recognises there is no material opportunity cost to reserving ‘in group’ frequencies for DTT use. Source: Ofcom (June 2008), *Digital Dividend Review: geographic interleaved awards 470 - 550 MHz and 630 - 790 MHz Consultation on detailed award design*, London: Ofcom <http://www.ofcom.org.uk/consult/condocs/ddrinterleaved/interleaved.pdf>

¹⁵ Ofcom (December 2007), *Digital Dividend Review - A statement on our approach to awarding the digital dividend*, Annexes, Ofcom: London: <http://www.ofcom.org.uk/consult/condocs/ddr/statement/ddrannex.pdf>

value of much of the spectrum is low. Indeed, Ofcom appears to continuously contradict its claim that access to interleaved spectrum is too costly for local TV by referring to it as “a likely use of interleaved spectrum”.¹⁶

What type of DTT services does society want?

62. ULTV does not believe the real question is whether ‘in group’ interleaved frequencies are used to supply DTT but, rather, what type of DTT services does society want to see gain access this spectrum? ULTV finds it unlikely that the most profitable services, able to afford the highest carriage fees, will be the services most valued by citizens or contribute the greatest value to society.
63. ULTV accepts that some local TV stations may be relatively marginal businesses if considered in isolation (as is the case with many digital businesses). Others may be operated on a not-for-profit basis.
64. ULTV believes that both commercial and community local TV services will not generally be willing to pay a significant premium to access interleaved spectrum. In contrast, an existing satellite or cable TV channel may be willing to pay a premium for access to interleaved spectrum to boost viewer-numbers given that all of their programming costs are already fully paid-for.
65. ULTV believes that services which add to the ecology of original UK content available on DTT (e.g. children’s, drama, news, factual and local TV) are unlikely to pay a premium rent to a spectrum gatekeeper. ULTV suspects that the services most likely to be willing and able to acquire capacity from a spectrum gatekeeper will be existing satellite channels seeking to extend their reach such as shopping, gaming, psychic and adult services.
66. ULTV does not question the attraction of operating a business as a monopoly spectrum gatekeeper. Collecting rents from shopping, psychic, adult or other UK-wide channels may well offer a more attractive return than operating a local or community media business. However, ULTV finds Ofcom’s ‘market power led’ approach to releasing ‘in group’ frequencies impossible to reconcile with its statutory duty to secure the “*purposes of public service television broadcasting*”.

Minimising the costs and maximising benefits of regulation

67. ULTV believes it is irrational for Ofcom to seek to argue that implementing a regulated pricing mechanism and oversight of DTT capacity in local markets would have any significant opportunity cost. ULTV notes that a Community Multiplex is likely to carry a range of content determined by evidence of local support and demand. A significant proportion of this overall content is likely to be from a UK network (i.e. non-local) source if this is what audiences demand.
68. ULTV obviously does not deny that reserving DTT capacity for one DTT user restricts freedom to put this spectrum to a sudden alternative DTT use – that would be a purpose of the regulation. ULTV is confident it is not beyond Ofcom’s ability to implement a proportionate regulatory regime targeted at achieving public policy objectives. ULTV believes an important aspect of this regime would be to ensure that citizens and consumers are fully involved in its design and ongoing implementation.

¹⁶ Ofcom (December 2007), *Digital Dividend Review – A statement on our approach to awarding the digital dividend*, Statement, Ofcom: London: <http://www.ofcom.org.uk/consult/condocs/ddr/statement/statement.pdf>

69. ULTV believes that involving representatives of the community in the operation of both local TV services and Community Multiplexes is one method of ensuring that the community is engaged in – and not detached from – the regulatory process. It would ultimately be for communities (and not just Ofcom) to consider what regulatory controls are appropriate to protect community interests – minimising the costs and maximising the benefits of regulation to protect citizens and consumers.
70. ULTV is confident that a well-designed Community Multiplex licensing regime will enable innovation to flourish and not be stifled to a much greater degree than a spectrum gatekeeper interested in maximising rental yields and profits.

Protecting the interests of PMSE users

71. ULTV understands that there may be a very small number of areas in the UK where historic peak demand for interleaved spectrum for PMSE applications is high.
72. ULTV supports the contribution made by PMSE users to the UK creative industries and wishes to see PMSE continue to benefit from adequate spectrum at affordable rates. ULTV believes it is possible to protect the interests of PMSE users at the same time as making suitable spectrum available for new uses including expanding the DTT platform in the interests of local viewers and advertisers.
73. ULTV proposes that Ofcom establish a committee of inquiry to consider what action may be appropriate to ensure that PMSE users are able to move to a more efficient use of spectrum in the small number of locations where there is pressure on interleaved spectrum availability.
74. ULTV believes that a committee of inquiry is the fairest method to consider and resolve the rare instances where they may be a conflict between PMSE and local DTT demand for interleaved spectrum access. Such an inquiry would enable all arguments to be assessed and research to be undertaken by an independent party. In ULTV's view this would be preferable to setting inflexible rules or conducting an auction which does not take account of societal value.

Community Multiplexes not quasi-UK multiplexes

75. Ofcom originally said:

*"We anticipate awarding (geographic interleaved) packages in about 25 locations."*¹⁷

76. This obviously fell very far short of the minimum 81 packages which ULTV believes are essential to deliver a UK-wide network of local TV services (relating to the 81 transmitter stations where all DTT viewers pointed their antennas at the start of the digital switchover process). ULTV believes that if any of these significant 81 locations are not used to deliver local TV it has consequences for the viability of all other local TV operators (for instance, diminishing the ability to invest in high quality programming and attract agency advertising on a regional and UK network level).¹⁸
77. Ofcom subsequently revised its proposals, stating:

¹⁷ Ofcom (December 2007), *Digital Dividend Review – A statement on our approach to awarding the digital dividend*, Statement, Ofcom: London: <http://www.ofcom.org.uk/consult/condocs/ddr/statement/statement.pdf>

¹⁸ ULTV believes there will also be significant interest in delivering local TV services using many of the smaller DTT sites which are currently used as 'relays' of the larger DTT sites.

“In this document we put forward 81 transmission sites for which we might award spectrum. If used for DTT, depending on the technology employed, they could in aggregate cover around 80 per cent of the UK population.”¹⁹

78. The 80 per cent coverage projection is subject to a number of caveats:

- it ignores where viewers point their existing rooftop antenna;
- coverage will vary dependent on transmission mode adopted;
- it assumes mast heights which may not be available; and
- critically it is based on theoretical antenna templates which are highly unlikely to be realisable in practice.

79. ULTV notes the prediction of 80 per cent population coverage is highly unlikely to be achieved and, even if approaching this figure, still leaves a fifth unserved. Despite this concern, ULTV recognises this spectrum would be capable of contributing to a thriving new tier of local TV and a range of other socially-valuable applications. However, there is a sting in the tail as Ofcom has explicitly stated it plans to design an auction process which encourages the best interleaved frequencies to be used for new UK-wide services and not local TV. Ofcom proposes:

*“A **combined award** of ‘large’ lots in the locations identified as being most suitable for aggregation, i.e. using a number of lots together for one service...with the frequency at each location chosen in order to maximize possibilities for geographic aggregation.”²⁰ (Ofcom emphasis)*

80. ULTV has decided to reserve final judgement until it has seen accurate coverage projections (based on realisable transmission configurations) for new DTT multiplexes using interleaved spectrum. However, ULTV is likely to oppose any award design which is intended to encourage the combination of larger interleaved lots into a quasi-UK multiplex. ULTV fears this would mean only ‘scraps’ of spectrum being left for local TV and of such poor quality they are often unlikely to deliver viable services.

81. ULTV notes that no published evidence supports the theory that interleaved spectrum may be required to supplement one or two new UK-wide DTT multiplexes in the 600MHz band (“lower cleared” spectrum). Arqiva’s report for Ofcom demonstrates that it is possible to deliver two new UK-wide DTT multiplexes in the lower cleared spectrum without any supplementary interleaved frequencies.²¹ ULTV believes that there are unlikely to be any geographic areas in which an interleaved frequency offers better coverage than a lower cleared frequency.

82. The choice facing Ofcom is the incremental social benefit of a Community Multiplex operated for the benefit of society against allowing the ‘best’ frequencies to be amalgamated into new UK multiplexes serving the interests of spectrum gatekeepers.

83. On the evidence currently available, ULTV believes that in many populated areas of the UK there will only ever be one ‘good’ interleaved frequency likely to offer acceptable city, county or other sub-regional coverage and be suitable and available

¹⁹Ofcom (June 2008), *Digital Dividend Review: geographic interleaved awards 470 - 550 MHz and 630 - 790 MHz*, Consultation on detailed award design, Consultation, Ofcom: London: <http://www.ofcom.org.uk/consult/condocs/ddrinterleaved/interleaved.pdf>

²⁰ Ofcom (June 2008), *Digital Dividend Review: geographic interleaved awards 470 - 550 MHz and 630 - 790 MHz*, Consultation on detailed award design, Consultation, Ofcom: London: <http://www.ofcom.org.uk/consult/condocs/ddrinterleaved/interleaved.pdf>

²¹ Arqiva (March 2009), *CH21 to CH60 Creation of Layers 7 and 8 in released Spectrum*, Study by Arqiva for Ofcom, Arqiva: Hampshire: <http://www.ofcom.org.uk/radiocomms/ddr/documents/ch21.pdf>

for local DTT use. Ofcom has a choice. It can either allow a 'gatekeeper' to monopolise this spectrum and exploit their market power – or it can regulate access to ensure local TV users (and others) are able to serve the communities they represent and provide content meeting public purposes.

84. ULTV believes that Ofcom should adopt a 'community first' policy and only consider alternative options to release 'in group' frequencies once it is clear that credible local demand has been adequately satisfied.
85. ULTV believes that, even where more than one frequency may be available at a DTT site, there may be a good case for all frequencies to be released to the market via a Community Multiplex award mechanism. This would enable a wide range of services to be developed serving local tastes and interests – catering both for geographic communities and communities of interest.
86. ULTV expects there to be many areas of the UK where there is credible demand for more than one Community Multiplex to be licensed (assuming suitable spectrum availability) to provide both local/regional and quasi-UK services. ULTV notes this would be comparable to existing local and regional DAB multiplexes which often carry quasi-UK services alongside local (including local 'affiliate') services on the same multiplex.
87. ULTV accepts that not all quasi-UK services will be available on a consistent basis in all areas. This is an inevitable consequence of accessing interleaved frequencies which are not available (or suitable for DTT) on a consistent basis throughout the UK.

Learning the lessons from Manchester and Cardiff

88. In 2009, Ofcom held early experiments in auctioning interleaved spectrum in Manchester and Cardiff. Ofcom can no longer claim that this spectrum is not attractive to shopping channels or other services making little or no contribution towards public service purposes. Ofcom is aware that in Cardiff the spectrum currently remains unused whilst in Manchester it is now primarily being used to simulcast shopping channels.
89. ULTV believes that the failure of Ofcom's 'market-led' approach in Manchester and Cardiff demonstrates the importance of imposing 'use it or lose it' and positive content conditions upon local multiplex licence-holders.
90. ULTV believes that even the most enthusiastic proponent of spectrum auctions can no longer delude themselves that allowing unregulated gatekeepers to hoard public spectrum is a constructive policy likely to contribute positively to society. ULTV calls upon Ofcom to release new interleaved spectrum packages in both Manchester and Cardiff using a Community Multiplex award mechanism.

Learning the lessons from DTT

91. The traditional 'pact' between spectrum-holders and society was the provision of public service content in exchange for access to public assets. In what ULTV views as an act of regulatory profligacy, Ofcom has gifted valuable public spectrum to 'commercial' DTT multiplex operators in exchange for no meaningful public service obligations.
92. What is more, ULTV believes the regulator has compounded its failure by permitting these same multiplex operators to exploit their pricing power. Ofcom's deliberate

policy has been to allow DTT gatekeepers to maximise profits by selling access to scarce spectrum to the highest bidder. Ofcom has failed to produce any evidence to suggest this policy has served the public interest.

93. Ofcom cannot fail to be aware of a widespread concern that existing UK-wide DTT multiplex operators have historically been able to enjoy supernormal profits. In 2006, Ofcom was so concerned about the alleged behaviour of DTT operators that it launched a full market review – only to drop it following protests from those it was investigating.²²
94. The Office of Fair Trading (“OFT”) has already concluded there is no competitive functioning market in DTT capacity. The OFT noted in its assessment of the acquisition of SDN (Multiplex A) by ITV plc:

“...it appears that ITV and Crown Castle would constrain each other little in the sale of multiplex capacity. The use of long term contracts and the differing dates for licence renewal means that there is a gap of several years between when ITV and Crown Castle capacity becomes available. If, in the absence of temporal competition, a customer for DTT multiplex capacity attempts to use the threat of switching to ITV in negotiating with Crown Castle (or vice versa) it is unlikely to be an effective threat. Such a customer would likely face substantial costs in switching, as advertising or subscription revenue would be foregone by not having the channel on DTT for a period of years. The presence of such costs are likely to mute any prospects for demand side switching and the level of demand for DTT multiplex capacity means that the supplier is unlikely to face a similar loss of revenue.”²³

95. ULTV believes it is not possible to dismiss the value of regulatory assets when video streams are reportedly selling in the market at around £10 million per annum. This is circa half the reputed circa £19 million programming budget of ITV3, the UK’s second highest rating digital channel. The only non-BBC children’s channel on DTT, CITV, has a reputed annual budget of circa £3.5 million. No other children’s channel can afford the rents payable to DTT’s near-monopoly gatekeepers.
96. ULTV believes the lesson from DTT licensing is that allowing spectrum gatekeepers to strangle broadcasters with high rents ‘crowds out’ services from new entrants careering for niche interests such as arts, culture, comedy and children’s programming. ULTV believes that services from new entrants could flourish if able to secure access to DTT capacity on genuinely “fair” regulated terms.

Learning the lessons from DAB

97. Concerns have long been expressed that Ofcom has chosen to turn a ‘blind eye’ to the pricing power of DAB spectrum gatekeepers. Today, there is some concern DAB gatekeepers will seek to exploit their dominant position by increasing rents even further if and when there is ever a digital radio ‘upgrade’ (as Ofcom has allowed dominant DTT gatekeepers to increase rents in the run up to TV switchover).
98. ULTV does not wish to see Ofcom repeat the mistakes of the past which, in ULTV’s view, have allowed some DAB and DTT multiplex operators to abuse their market

²² Ofcom (October 2006), *Review of wholesale digital television broadcasting platforms – Update of review*, Statement: <http://www.ofcom.org.uk/tv/ifi/marketreviews/wholesaledtvb/review.pdf>

²³ Office of Fair Trading (August 2005), *Anticipated acquisition by ITV plc of SDN Limited*, London: OFT: http://www.of.gov.uk/shared_of/mergers_ea02/2005/itv.pdf;jsessionid=D6672F71E0E1B5BA30C0F8E090159EE8

power in order to make obscene profits at the expense of service providers. ULTV is aware of industry concerns that, in the case of DAB, multiplex capacity has even been left idle in order to restrict supply and maintain inflated rental yields.

99. ULTV believes that existing FRND and competition conditions attached to DAB and DTT multiplex licences have proven woefully inadequate and, in practice, difficult to enforce. However, despite many concerns, Ofcom at least still claims to maintain strict regulatory controls over DTT and DAB multiplex capacity. ULTV cannot comprehend why Ofcom has never publicly expressed any concern for how local DTT gatekeepers might choose to behave.
100. ULTV believes that if Ofcom were to allow local DTT gatekeepers to charge the type of rents often seen on local DAB multiplexes this would represent a serious threat to the success of new local TV services. This is not just a theoretical concern. In the early days of analogue local TV (“RSLs”) a number of operators signed-up to long-term transmission contracts at rents which represented a significant proportion of their annual turnover. ULTV is aware that a number of RSLs believe that these transmission contracts (as well as poor coverage) were often a significant factor in the demise of analogue local TV services.

Learning the lessons from community radio

101. According to Ofcom, the average community radio station operates with 74 volunteers who together give around 214 hours of their time a week.²⁴
102. ULTV believes community radio has been a tremendous success and this is, in large part, a credit to Ofcom. However, ULTV is concerned that, if Ofcom had adopted its ‘market-led’ approach to the spectrum required by community radio, then a station might only be on-air if it could afford to acquire an FM frequency from a monopoly spectrum gatekeeper.
103. ULTV believes that community radio gives a indication of what can be achieved by citizens themselves when Ofcom’s ‘market-led’ ideology is tempered by a desire to act positively to ensure spectrum is used to achieve social gain and positive outcomes for communities.
104. ULTV appeals to Ofcom to review how the community radio licensing regime enhances (rather than destroys) the provision of community broadcasting.

Community Multiplex – public interest licence terms

105. This submission proposes that Ofcom make a new category of Wireless Telegraphy Act (“WTA”) licence available in geographic locations – a Community Multiplex licence. The primary purpose of Community Multiplex licences would be to help secure Ofcom’s core broadcasting duties in local markets.
106. ULTV proposes that wherever practical at least one ‘in group’ interleaved frequency be reserved for the award of a Community Multiplex licence operating in the interests of the local community. There would be requirement on Community Multiplex providers to launch a local DTT multiplex carrying services (whether commercial or non-commercial) broadening choice for a local audience.

²⁴ Ofcom (March 2009), *Community Radio: Annual report on the sector*, Statement, Ofcom: London: http://www.ofcom.org.uk/radio/ifi/rbl/commun_radio/cr_annualrpt/cr_annualrpt.pdf

107. ULTV proposes that Community Multiplex licences are awarded via an open and transparent comparative selection process (a “beauty parade”). It would be for each Community Multiplex operator to set out, as part of the application process, how they intend to allot the capacity available between service providers. This might mean a local newspaper running their own television channel(s) alongside Asian, student, community and/or networked services.
108. The aim of the multiplex operator would be to meet citizen demand for quality programming – not to exploit their monopoly status. The precise mix of television, radio and/or interactive services would reflect local support and demand. ULTV proposes that the Community Multiplex licensee would have a requirement to operate independently of political or sectarian interests.
109. ULTV argues that Community Multiplex licences should include conditions to ensure that they, inter alia:
- seek to optimise spectral efficiency and deliver the mix of services most likely to maximise total value to society;
 - only collect in overall carriage fees from content providers a fair and reasonable sum necessary to recoup the legitimate costs of operating the multiplex and the achievement of any related community-based objectives (this may include transparent carriage fees to meet an operators’ transmission costs, marketing, licence management, donations to appropriate causes such as community projects, Ofcom fees and ‘spectrum tax’ if applicable together with any reasonable contingency fund);
 - always make capacity available to content providers on FRND terms; and
 - only depart from any of the above principles with the express prior consent of Ofcom.
110. To maximise transparency and minimise the risk of abuse, ULTV recommends that Ofcom (or government) require that Community Multiplex licences are exclusively held by non-profit-distributing companies. In practice, this may mean that local service providers together establish their own company limited by guarantee for the purpose of holding a Community Multiplex (WTA) licence. Alternatively, a licence may be held by a third party community organisation or charitable trust.
111. ULTV suggests that Ofcom produce guidance to enable Community Multiplex operators to know how it intends to monitor and enforce the licence conditions. This could include a suggested ‘model’ FRND code for Community Multiplex operators to consider adopting.
112. ULTV would expect Community Multiplex operators to honour the spirit of their licence terms and would look to Ofcom to retain backstop powers to secure the public interest. Ofcom should be prepared to take enforcement action, if required, to ensure that operators do not evade or circumvent their licence terms.
113. ULTV wishes to see local broadcasters expending their finite resources on production – not servicing monopoly rents. ULTV expects Community Multiplex operators to keep their costs at a reasonable level in order to ensure that capacity is affordable to groups engaging in local production and serving the interests of citizens.

Local TV programme schedule

114. Whilst not being prescriptive, ULTV expects Community Multiplexes to generally carry at least one local TV service.
115. ULTV expects the programme schedule for local TV operators to be developed following local research and consultation. However, ULTV envisages that a local news magazine would be one of the flagship programmes produced.
116. ULTV believes the nature of local TV is that it is not difficult to supplement local news with other programmes at marginal incremental cost. If suitable facilities are available then filming additional programmes, for example interviewing local politicians, sports personalities or other members of the community, becomes a possibility. ULTV expects local TV to become part of the fabric of a community, providing resources for citizens to produce programmes both for a linear service and for online.
117. ULTV believes there are many community organisations, universities, sports clubs, museums, churches/mosques/temples, youth associations, charities, small independents and individuals able and willing to contribute to local TV. Public service content of this nature may not be easily discoverable if it is not part of a schedule. ULTV envisages local news acting as a 'magnet' and then driving traffic to other programming covering topics such as the arts, sport, culture, history, wildlife and religion.

Strengthening local media

118. ULTV expects local TV stations carried on Community Multiplexes to play an important role in strengthening local media. With a decline in the readership of many daily local newspapers, ULTV believes that local TV could make a significant contribution to the dissemination of local news, information and opinion.
119. ULTV is pleased that some existing local newspaper and radio groups have expressed interest in playing an active role in the development of local TV. In addition, ULTV is aware of new entrants seeking to develop cross-platform services.
120. ULTV anticipates that Community Multiplexes will enable local media companies to flourish without being impeded by spectrum gatekeepers seeking to abuse their monopoly status.
121. ULTV believes that Community Multiplexes will play an important role in promoting a strong and diverse local media industry including by:
 - offering opportunities for commercial and community media groups to launch their own television channels and/or interactive services (on their own or with partners);
 - creating innovative new services as a platform for expression both for geographic communities and communities of interest;
 - offering carriage on fair terms to BBC, commercial and community radio stations; and
 - using visibility on DTT to aggressively promote and drive traffic to new internet-based local media platforms.

Flaws in auction mechanism

122. ULTV believes that any attempt to auction 'in group' interleaved frequencies is likely to be counter-productive.

123. Ofcom argues that auctions allow spectrum packages to be acquired by those who value them most. However, groups who place the highest monetary value on 'in group' interleaved spectrum may often be the least committed to serving the public interest.
124. As Ofcom itself noted in its '*Digital Local*' report:
- "Many of the potential benefits of local services are social benefits that are unlikely to be taken into account by the market: social cohesion, democratic engagement, better-informed and more active citizens."*²⁵
125. ULTV believes that credible groups committed to using interleaved spectrum productively are generally likely to bid the same (or similar) amounts in any cash auction process – potentially at no more than the reserve price set by Ofcom. ULTV does not understand how a cash auction process can be regarded as useful in these circumstances.
126. ULTV believes that any auction mechanism is likely to encourage gatekeepers to acquire spectrum in order to make a profit at the expense of service providers rather than by offering services meeting the public interest.
127. ULTV believes that, if Ofcom were to proceed with its current proposed auctions, interleaved spectrum would not be likely to be acquired by those who wish to maximise value to society but, rather, those who wish to minimise value to society. Ofcom's auction process could not be expected to assign spectrum to the multiplex operator with the most compelling plans to serve a diverse range of local interests. Rather, Ofcom's auction process would appear destined to lead to multiplex operators with the most compelling plans losing out to a spectrum gatekeeper seeking to maximise rents and profits.
128. ULTV believes that the success of Ofcom's community radio licensing regime demonstrates that a comparative selection process need not be difficult to implement. Selection of multiplex operators would be based upon the credibility of their business plans and proposals to serve the community.
129. If a gatekeeper were to acquire 'in group' frequencies at auction and then exercise their pricing power (i.e. denying local services access to spectrum if they do not pay a premium rent) this has potentially severe implications for the range of services (including local content services) available to local viewers. ULTV does not comprehend how Ofcom can consider this to be in the public interest. ULTV believes that the least fair method to assign 'in group' frequencies is based on the size of a cheque book of a spectrum gatekeeper.
130. Rather than encouraging a 'winner takes all' approach to local spectrum, ULTV believes Ofcom should be encouraging cooperation between different service providers in the interests of delivering a range of services meeting the tastes and interests of local audiences.
131. ULTV notes there are a number of occasions when Ofcom has proposed the use of a beauty parade rather than auction mechanism including, in recent times, for the assignment of DVB-T2 capacity on Multiplex B. ULTV believes it is important Ofcom

²⁵ Ofcom (January 2006), *Digital Local - Options for the future of local video content and interactive services*, Ofcom: London: http://www.ofcom.org.uk/tv/psb_review/digital_local/digital_local.pdf

adopts award mechanisms for broadcast services which are broadly consistent, as well as proportionate and targeted at achieving its broadcast policy objectives.

132. ULTV believes Ofcom should design an award process for Community Multiplexes with the intention of increasing the plurality of broadcasting voices available to UK citizens and in line with the European Parliament's resolution of 25 September 2008 which called on:

"Member States to make television and radio frequency spectrum available, both analogue and digital, bearing in mind that the service provided by community media is not to be assessed in terms of opportunity cost or justification of the cost of spectrum allocation but rather in the social value it represents".²⁶

Application of spectrum subsidy to achieve social gain

133. Ofcom and government have **already** decided to reserve access to UHF spectrum for DTT and interleaved spectrum for PMSE. ULTV is concerned that this **existing** reserved spectrum is at risk of not being used efficiently to maximise public value.
134. ULTV believes that spectrum subsidy should always be regulated by Ofcom to ensure it is applied for the benefit of citizens in a manner which is explicit and transparent. ULTV has long expressed concerns that existing DAB and DTT spectrum subsidies generally do not benefit viewers or listeners but are privately appropriated for the benefit of shareholders in multiplex operators.
135. ULTV believes that the value of any spectrum subsidy granted to Community Multiplex operators should be reflected in the 'public service' commitments entered into by service providers gaining access to capacity at regulated rents.²⁷
136. ULTV recognises that Ofcom's decisions are influenced by its statutory duties and not the interests of the Exchequer.²⁸ Nevertheless, ULTV accepts it is legitimate for policy-makers to consider local TV provision in the context of achieving wider public policy objectives including reducing the structural deficit.
137. ULTV does not anticipate there being many participants in a cash-based auction of 'in group' interleaved spectrum. It seems reasonable to assume that any one-off lump sum payments are unlikely to have a material impact on the public finances.
138. ULTV believes that local TV has a significant role to play in promoting social cohesion in local communities including tackling fear of crime and anti-social behaviour. ULTV believes that the introduction of local TV could ultimately lead to significant cost-efficiencies in public sector budgets including reducing local and central government expenditure on paper-based communications.

²⁶ Official Journal of the European Union (September 2008), *European Parliament resolution of 25 September 2008 on Community Media in Europe* (2008/2011(INI)), <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:008E:0075:0079:EN:PDF>

²⁷ ULTV believes it could potentially be reasonable for a Community Multiplex operator, subject to the terms of their licence, to charge differential rents – for example if carrying some services which do not enter into any explicit 'public service' commitments.

²⁸ For example, ULTV acknowledges that Ofcom's proposal for auction 'winners' to only ever be required to make a cash payment reflecting the bid placed by the 'runner-up' would lead to spectrum being assigned at below the market rate.

139. Ofcom has already announced that it accepts the research finding that the vast majority of interleaved spectrum has no material monetary value.²⁹ However, ULTV is not opposed, in principle, to the application of administered incentive pricing ("spectrum tax") if applied fairly to all broadcasters and subject to appropriate prior consultation.³⁰
140. ULTV believes that Ofcom's administrative fees for Community Multiplex licences should be proportionate relative to existing broadcast licence fees and taking account of Ofcom's stated charging principles.³¹

Community Multiplex – licence mapping

141. ULTV advocates Community Multiplexes of many different shapes and sizes including, potentially:
- larger multiplexes covering a broad area (these might potentially include more than one local TV service targeting dedicated geographic areas as well as a number of network services);
 - medium sized multiplexes targeted at a specific geographic location potentially using directional antenna; and
 - small-scale multiplexes serving small populations at relay sites (some may even target just a few hundred viewers).
142. ULTV proposes that the first round of Community Multiplex licensing focus on maximising coverage at the 81 existing commercial DTT transmitter sites (and any additional DTT sites for which credible demand is identified by Ofcom following consultation). ULTV proposes further rounds of Community Multiplex licensing strive to make suitable spectrum available at further DTT sites where demand exists.
143. ULTV accepts there may be a case for aggregating some of the smallest DTT sites in order to create viable packages for award. ULTV expects Ofcom research and consultation to determine whether this is appropriate. Even if there were some limited aggregation of the 81 existing commercial (or other DTT) sites this need not preclude some 'ultra local' opt-outs for community programming.
144. ULTV believes that viewers of smaller relay stations are often amongst those who are least well served by existing regional news coverage. Under Ofcom's current proposals, a terrestrial viewer whose aerial points to any of the UK's 1,000+ relays will receive no additional plurality of TV service providers following digital switchover. The capacity on the DTT multiplexes available at these relays will be monopolised by the same broadcasters who previously monopolised all analogue TV spectrum. The diversity of broadcasting outlets and voices which is an inherent feature of a modern liberal democracy will not be enhanced by the digital switchover process for these viewers.

²⁹ Analysis Mason (May 2009), *Opportunity cost calculations for spectrum proposed for award to a band manager with obligations to PMSE*, London: Analysis Mason Limited:
<http://www.ofcom.org.uk/consult/condocs/bandmanager09/userguide.pdf>

³⁰ ULTV is not opposed to administered incentive pricing in principle although it has many concerns about its application in practice. To enable new DTT operators to develop business plans for embryonic businesses with certainty, ULTV suggests no spectrum tax for at least the first five years of a Community Multiplex licence term. ULTV notes this would be in line with previous decisions made by Ofcom to exempt DTT and DAB multiplex operators from spectrum tax in their formative years.

³¹ Ofcom (September 2004), *Principles for setting Licence Fees and Administrative Charges*, Consultation, Ofcom: London, http://www.ofcom.org.uk/consult/condocs/licence_admin_fee/licence_admin.pdf; and Ofcom (February 2005), *Ofcom's Statement of Charging Principles*, Statement, Ofcom: London:
http://www.ofcom.org.uk/consult/condocs/socp/statement/charging_principles.pdf

145. ULTV believes there are likely to be viable business plans able to support all sizes of Community Multiplex. ULTV expects innovative proposals to be developed to provide community-based TV and text services at some of the UK's smallest DTT relay stations which, to date, appear to have been excluded from Ofcom's consideration.
146. ULTV would expect Ofcom to conduct research and consultation on the optimal licence map for Community Multiplexes. This consultation may identify some areas where there is demand for 'relay' as well as 'main station' transmitter sites to be included within a single Community Multiplex licence award.
147. ULTV proposes that Ofcom should have discretion to consider proposals to extend Community Multiplex coverage areas, post award, where appropriate.
148. ULTV believes it is important to give particular consideration to the interests of the devolved nations when licensing Community Multiplexes. For example, in Northern Ireland, some Community Multiplex operators may be required by Ofcom and government to reserve suitable capacity for RTÉ One, RTÉ Two and/or TG4. ULTV understands that the Scottish-based Institute of Local Television (a member of ULTV) has responded to this Consultation setting out proposals for a federal local TV network in Scotland feeding into a UK-wide network.

Community Multiplex – award procedure

149. ULTV proposes that Ofcom consult on the development of an open and transparent award process for Community Multiplex licensing.
150. It is of course within the power of government and Parliament to introduce primary or secondary legislation directing Ofcom to consider specific criteria for the award of new local DTT licences.³² However, ULTV proposes that Ofcom proceed with Community Multiplex licensing under its existing statutory powers.
151. ULTV notes that Clause 42A of the Broadcasting Act 1996 enables Ofcom to issue RSL licences "*for a particular establishment or other defined location*". Clause 42B of the Broadcasting Act 1996 states that applications for restricted services "*shall be made in such manner as...(Ofcom) may determine*". Ofcom has always had discretion to award RSL or other WTA licences using the criteria which it considers to be appropriate.
152. Subject to public consultation (and unless otherwise directed by Parliament), ULTV proposes selection criteria for Community Multiplex awards are based on Ofcom's general duties as set out in Section 3 of the Communications Act 2003. These could be framed to consider the ability of each applicant to provide a service which secures, inter alia:
 - the optimal use of the spectrum;
 - a wide range of television and radio services which (taken as a whole) are both of high quality and calculated to appeal to a variety of tastes and interests;
 - the fulfilment of the purposes of public service television broadcasting;

³² The government has the power, under section 244 of the Communications Act 2003 ("CA03"), to present an order to Parliament introducing a framework for local digital television. The government also has the power to make an order under section 243 of the CA03. Such an order may specify modifications to sections 7 to 16 and sections 18 and 19 of the Broadcasting Act 1996 ("BA96"). The requirement to obtain a multiplex operator's consent for new service obligations under section 12(2) of the BA96 is something that falls within the category of modification measures that may be covered by such an order. The government has additional powers to, inter alia, direct Ofcom's use of spectrum, to require cable operators to carry named services and to introduce a community television fund.

- the maintenance of a sufficient plurality of providers of different television and radio services;
- the different needs and interests, so far as the use of the....spectrum...is concerned, of all persons who may wish to make use of it;
- the needs of persons with disabilities, of the elderly and of those on low incomes;
- the desirability of preventing crime and disorder; and
- the different interests of persons in the different parts of the United Kingdom, of the different ethnic communities within the United Kingdom and of persons living in rural and in urban areas.

153. Based on these statutory duties, and taking account of the four primary award criteria previously adopted by the Independent Television Commission (“ITC”) for the award of RSLs³³, ULTV suggests that the award criteria for Community Multiplex licences might include:

- the extent of the coverage area proposed to be achieved by each applicant;
- the ability of each applicant to maintain its proposed service over the licence period;
- the applicant's ability to cater for the tastes and interests of members of the local community;
- the extent to which each applicant would broaden the range of DTT services available in the area and provide services distinct from those services;
- the extent to which there is evidence of local demand or support for a proposed service;
- the extent to which each applicant would fulfill the purposes of local public service television broadcasting³⁴;
- the extent to which each applicant would contribute to the social development of the local community with the objective of reducing crime and disorder; and
- whether, in contracting or offering to contract with service providers, the applicant has acted in a manner calculated to ensure fair and effective competition in the provision of such services.

154. Without prejudice to the application process, ULTV expects that the requirement to demonstrate viability may tend to favour applicants that have developed partnerships or collaboration with a range of organisations in their community – potentially including existing commercial and/or community media groups. Given the challenges faced by many of these types of groups, ULTV does not expect these organisations

³³ ITC notes for the guidance of applicants for RSL licences (Issue 4, January 2003) stated, inter alia:

“If there are competing applications for local television restricted service licences, the ITC will consider:

- (i) *in particular, the ability of each applicant to provide a genuine addition to the range of television services which is available in the locality, and to meet the needs of tastes and interests not already catered for by existing services;*
- (ii) *the size of the likely community at which the proposed service is aimed;*
- (iii) *the views of appropriate bodies e.g. university authorities where services are aimed at a campus;*
- (iv) *where the current licensee applies for a local television RSL... ITC will on balance be more likely to favour continuity of service by a current licensee, unless in all the circumstances the merits of the application made by the current licensee are outweighed by the merits of an alternative application.”*

³⁴ Ofcom has proposed the following “**public purposes of digital local content and interactive services**”:

- *To inform ourselves and others and to increase our understanding of the world through news, information and analysis of current events and ideas, with particular focus on issues relevant to our locality*
- *To stimulate our interest in and knowledge of arts, science, history and other topics, particularly those relevant to our locality, through content that is accessible and can encourage informal learning*
- *To reflect and strengthen our cultural identity, particularly that based on shared local identities, through original programming at local level, on occasion bringing audiences together for shared experiences*
- *To make us aware of different cultures and alternative viewpoints, through programmes that reflect the lives of other people and other communities, especially those within our local area*
- *To support and enhance our access to local services, involvement in community affairs, participation in democratic processes and consumer advice and protection*

Source: Ofcom (January 2006), *Digital Local - Options for the future of local video content and interactive services*, Ofcom: London: http://www.ofcom.org.uk/tv/psb_review/digital_local/digital_local.pdf

to typically participate in a cash auction process but suspects there would be interest in participating in the provision of services carried on Community Multiplexes.

155. ULTV suggests that, as part of a wider public consultation exercise, Ofcom invites government or Parliament to consider whether it wishes to direct Ofcom to consider any alternative award criteria.
156. ULTV acknowledges the difficulties that can be inherent in a beauty parade especially where there may be more than one compelling application. Nevertheless, ULTV believes that Ofcom's broadcast licensing team has significant experience (particularly in community radio) of overseeing a successful regime which has achieved broad support and acceptance.
157. ULTV suggests that local Community Multiplex licences are awarded on a region-by-region basis in the run up to digital switchover based upon frequency availability. ULTV favours an open and transparent licensing process in which Ofcom fully publishes its briefing papers and meeting notes save only for strictly confidential (commercially sensitive) information.
158. ULTV accepts Ofcom may wish to reserve the right not to award a Community Multiplex licence in an area in the event it is not satisfied with any of the applicants.

Services carried on Community Multiplexes

159. ULTV does not expect Ofcom to be prescriptive about the types of services that could be carried on Community Multiplexes. It would be for applicants to propose to Ofcom the mix of services they wish to carry and to gain Ofcom's consent as part of the award process.
160. ULTV anticipates that, subject to frequency constraints in different areas of the UK, many Community Multiplex licences will adopt QPSK or 16QAM transmission enabling them to carry a number of audio and video streams and some more limited text services. ULTV expects this will often lead to a range of TV and radio services (commercial and community) being offered in local communities. These could serve a variety of tastes and interests including local news and information, ethnic and niche services, student or community access.
161. ULTV would wish to see Community Multiplex operators prioritise capacity for free-to-air ("FTA") services providing local and regional content and involving the community in programme-making. However, ULTV also expects that capacity may be available for non-local or subscription services (e.g. local sports channels, children's television).
162. In certain circumstances, Ofcom or the government may wish to compel some Community Multiplex operators to carry specific television and/or radio services (e.g. RTÉ services in Northern Ireland and BBC Alba or a new Scottish Network in Scotland). This would be consistent with existing Broadcasting Act multiplex licences where DTT operators are required to reserve DVB-T and DVB-T2 capacity for named broadcasters and DAB multiplexes which are required to reserve capacity for BBC Local Radio.
163. ULTV recognises that UK services may gain carriage agreements with relevant Community Multiplex operators (as has been witnessed with DAB multiplexes which often carry quasi-UK radio services alongside local radio services).

164. ULTV accepts that applicants for Community Multiplex licences may not wish to specify how they intend to use all multiplex capacity at the time of the original licence award. However, ULTV would expect Community Multiplex operators to be willing to set out the basis of their plans and to be accountable to Ofcom for how they assign capacity post-award.

Community Multiplex – monitoring service delivery

165. Each service carried on a Community Multiplex licence would require a Broadcasting Act licence. ULTV proposes that the annex to this licence would specify, inter alia:
- the nature of service and broad target audience;
 - the key programming commitments (local or other content commitments if any); and
 - other core commitments if any (e.g. commitments to community involvement, training, social gain objectives, community partnerships).
166. ULTV anticipates Ofcom will want to base procedures for licence monitoring and implementation on the success of the community radio licensing regime. ULTV believes community radio licensing has proven to be effective without becoming unduly burdensome or costly either for the regulator or licensees.
167. ULTV would expect any changes to programme services to normally be subject to the consent of the Community Multiplex operator as well as Ofcom who, acting reasonably, would retain ultimate backstop powers to amend service licences.

Community Multiplex – licence duration

168. ULTV believes that both Community Multiplex operators and service providers require long-term security of tenure in order to attract funding partners willing to invest in financing ventures. One of the concerns ULTV has about the 'gatekeeper' business model is, even if local TV services were to manage to reach DTT carriage agreements at suitable rents, they can typically expect to be offered only short-term contracts which may not give them the long-term security they require to develop local content services.
169. ULTV further believes that long-term licences help to protect the independence of service providers by minimising the perceived threat of politicians seeking to intervene in the licensing regime.
170. ULTV notes that there are a number of precedents for the award of long-term broadcast licences. For example:
- community radio licences are in effect now 12 year licences – there is a 2 year launch window followed by an initial 5 year term renewable for a further 5 year period;
 - Ofcom has awarded two local DTT licences in Manchester and Cardiff for an indefinite licence term (a minimum of 18 years); and
 - the UK-wide DTT multiplexes were awarded for a 24-year term (12 years renewable for a further 12 years).
171. ULTV acknowledges that local TV may not start to provide returns to investors until some years into the licence term. ULTV believes that a minimum licence term of around 18 years is reasonable for Community Multiplexes. It allows service providers

around two years to plan their launch and still have 16 years on air – encouraging investment in the development and marketing of high quality services. It also leaves open the potential for additional services to launch on a multiplex post-launch without the licence time-frame looking especially frightening.

172. ULTV believes that a significantly shorter licence term than around 18 years would risk discouraging investment and, potentially, risk regular disruption to viewers.
173. ULTV accepts in principle that Ofcom and government wish to reserve the right to occasionally review the best use of UHF spectrum. ULTV believes this review should not just encompass the success of Community Multiplex licensing but all other DTT services in the market. The Consultation states that Ofcom set an initial term for its local DTT awards in Manchester and Cardiff “*at 2026 to synchronise with the end of the renewed term of three of the existing DTT multiplexes*”.
174. ULTV accepts the benefit of setting an initial term which is broadly co-synchronise with the term of existing DTT multiplexes. However, it is now only 16 years until 2026 and this will be even lower by the time any new Community Multiplex licences start to be awarded. ULTV suggests that Ofcom and government consider options to offer a short (e.g. circa 4 year) licence extension to existing UK-wide DTT multiplex operators in order to allow 18 year licences to be awarded to new local DTT operators.³⁵
175. ULTV does not accept the argument that long-term licences are likely to lead to a sub-optimal allocation of spectrum. It would remain within the power of Ofcom to intermittently review regulations to consider whether they are still required.
176. ULTV does not believe that Ofcom should be at liberty to withdraw Community Multiplex frequencies prior to the end of the initial minimum term unless it is able to provide an ‘identical’ replacement frequency.³⁶

Community Multiplex – other non-technical licence terms

177. ULTV is not opposed to allowing Community Multiplex licences to be transferred subject to Ofcom’s prior consent and appropriate conditions to maintain the integrity of the original licence award. ULTV believes the not-for-profit nature of Community Multiplexes minimise the risk of WTA licences being sold purely for a windfall gain.
178. ULTV believes that Community Multiplex operators will have a strong incentive to ensure that all multiplex capacity is used efficiently (in line with their licence obligations) not least as this could lead to lower rents for service providers.³⁷
179. ULTV notes that, in the past, many DAB multiplexes have failed to supply the services offered in their original licence application and, in practice, Ofcom has had limited useful penalties at its disposal (imposing fines or revoking licences might be regarded as counter-productive). ULTV believes that Ofcom should reserve the right, in exceptional circumstances, to directly re-award (via beauty parade) vacant or under-utilised capacity on any Community Multiplex. ULTV expects that knowledge of

³⁵ ULTV believes that it is important consideration is given to the duration of Community Multiplex licences which are issued in future rounds of licensing (i.e. several years after the first round). A time will come within the second half of all Community Multiplex licences when operators will require certainty about future licence prospects. ULTV suggests a review would need to be carried out early to give operators certainty about Ofcom’s plans following the completion of the initial minimum licence term.

³⁶ Subject to consultation, ULTV suggests ‘identical’ replacement frequencies should guarantee no more than 1 per cent variation in coverage area or expected population coverage together with full compensation for any technology upgrade costs.

³⁷ This assumes that a multiplex operator charges fees based on fixed costs with individual fees reflecting the amount of capacity used by each service provider.

such a penalty would help to ensure that capacity is always fully utilised in the public interest.

180. ULTV notes that existing Channel 3 regional licensees are already gifted multiple 'free' video streams on DTT which they are at liberty to use for local TV should they wish to do so. ULTV is concerned that it would undermine the purpose of creating a new tier of terrestrial TV in local markets if incumbent Channel 3 licensees were able to control Community Multiplexes in areas where they hold existing 'public service' licences. Channel 3 operators already have a near-total monopoly in selling terrestrial TV advertising in local markets. ULTV wishes to see Community Multiplexes operated by parties which are independent of Channel 3 and sincerely committed to increasing the plurality of supply of local and regional programming and advertising – not just protecting their existing market dominance.
181. ULTV believes that the success of community radio is partly due to it being genuinely independent of existing major broadcasters. However, ULTV notes that there is a successful production industry in the UK which could potentially play a constructive role in the development of a new tier of local TV. ULTV recommends that consideration be given to enabling independent production companies to hold local TV Broadcasting Act licences without impacting on their independent status.
182. ULTV believes that, with careful planning, a new tier of DTT licensing will provide an opportunity for new entrants to provide both transmission services and content services which significantly contribute to the media ecology within local communities.

Local TV network centre

183. ULTV expects there to be opportunities for networks to provide syndicated content to local TV operators broadly based on the North American 'city TV' model. A self-funding network centre, providing network programming and distributing revenues to affiliated stations, forms an important component of ULTV's vision for the development of local TV in the UK.
184. ULTV believes that one or more networks are likely to develop organically through cooperation between independent local TV operators and, potentially, existing broadcasters or production companies. ULTV notes that BSkyB currently supplies news bulletins to Five and the commercial radio sector and has, in the past, also supplied news programming to RSLs. There may be further opportunities for cooperation and partnership between local TV and major broadcasters such as BSkyB.
185. ULTV believes that a 'Channel 6' network centre is likely to provide services not only to Channel 6 licensees (as proposed below) but also to other local TV services.
186. ULTV notes the potential for smaller local TV stations to be offered more onerous terms by a network centre than larger stations. ULTV proposes that Ofcom include a term in local TV and Channel 6 licences which gives it backstop powers to intervene in the case of disputes between different local licensees and a network supplier (e.g. disputes over apportionment of network costs and revenue).

ULTV's role in the success of local TV

187. ULTV is willing to play a constructive role in supporting Community Multiplex and local and community TV licensees and helping to establish networks for cooperation and sharing of best practice.

188. ULTV is already seeking to negotiate on behalf of local TV operators with third parties ranging from music copyright bodies to BARB (audience ratings). ULTV recognises its responsibilities to the sector and will continue to seek to ensure that, when the time comes, the path is set for the successful development of local TV in the UK.

Community Multiplex – technical licence terms

189. ULTV believes that Community Multiplex licences should be required to provide DVB-T services capable of being received by the majority of existing DTT receivers.
190. ULTV believes that it is impractical for Ofcom to issue licences based only on spectrum user rights in interleaved spectrum where the licences must be framed to provide appropriate protection to both existing and future DTT services. ULTV does not believe it will be practical for licences to be issued which do not include fixed transmission parameters which are capable of simple implementation and testing.
191. ULTV notes that Ofcom would appear to agree that an “*application and technology neutral*” award of interleaved spectrum is not practical. In Manchester and Cardiff, Ofcom abandoned its policy of an “*application and technology neutral*” award within only months of arguing such an approach was essential to the public interest.³⁸
192. Ofcom Chief Executive Ed Richards said prior to Ofcom’s policy U-turn in Manchester and Cardiff:
- “We believe that a...technology-neutral auction is the fairest, most transparent and most efficient way of assigning this spectrum, in the face of many, many conflicting demands for its use.”*³⁹
193. Ofcom implemented the opposite of a “*technology-neutral*” approach with frequencies released with conditions which specifically excluded “*the right to use the spectrum for services other than DTT*”.
194. ULTV believes further work is required to balance the interests of maximising coverage for new Community Multiplexes with the interests of minimising interference to existing DTT services. ULTV is concerned that early transmission projections produced by the Spectrum Planning Group for the conversion of RSLs to DTT have proven disappointing.
195. ULTV proposes that Community Multiplex applicants put forward their own technical plans as part of the licence award process. ULTV suggests that within clear transmission parameters each applicant should be free to propose their own:
- approach to determine transmission mode and use of capacity (including use of statistical multiplexing and/or error protection ratios); and
 - antenna design (subject to compliance with licence terms / reasonable interference restrictions).
196. ULTV further suggests that Ofcom should be open to considering minor adjustments to an applicant’s technical proposals post licence award. In particular, ULTV believes it is important to allow a degree of flexibility to operators to finalise their antenna

³⁸ Ofcom (June 2008), *Digital Dividend Review: geographic interleaved awards 470 - 550 MHz and 630 - 790 MHz Consultation on detailed award design*, London: Ofcom <http://www.ofcom.org.uk/consult/condocs/ddrinterleaved/interleaved.pdf>

³⁹ Ed Richards speech (December 2007): <http://www.ofcom.org.uk/media/speeches/2007/12/ddr>

design (with minor adjustments) at the commissioning stage in order to ensure coverage is optimised. This would allow operators to ensure that the antenna pattern adopted is not just based on a theoretical computer projection but, rather, actual measurements in the field.

197. Over time, the DTT platform may continue to develop new compression techniques and standards which may require additional flexibility. ULTV does not anticipate this causing any greater challenges to Ofcom than existing DTT multiplexes (issued under the Broadcasting Act) where Ofcom has consented to technical changes from time-to-time in the public interest.

Exiting RSL services

198. ULTV notes that Ofcom has agreed to extend existing RSL licences (albeit for less time than originally requested by operators) but remains concerned about the long-term future for these operators.

199. Whilst RSLs have never had the security of tenure that they might wish for, they have rarely ever had as little security as at present. ULTV notes that Ofcom's predecessor, the ITC issued guidance for RSL applicants intended to give comfort that frequencies would not be withdrawn. The ITC stated:

*"Once a local television service is on air, the ITC should do what it reasonably can to protect and sustain the availability of the frequency channel used for the service. However, if an exceptional benefit to DTT would be provided by reassigning the frequency, this would only be considered following a wider public consultation. The public nature of this consultation would recognise the fact that in a case such as this, existing viewers would be directly affected."*⁴⁰

200. ULTV does not ask Ofcom to make unreasonable guarantees to existing RSLs. However, all RSLs have made clear that they are keen to launch digital transmissions subject to overcoming practical and regulatory obstacles, including gaining an understanding of the future technical and regulatory environment. ULTV believes that the success of RSL digital trials could help demonstrate the potential for local TV on DTT and motivate others to invest in developing their own services.⁴¹

The Channel 6 proposal

201. ULTV is excited about the potential opportunities interleaved spectrum offers for the development of new DTT services in local markets. However, ULTV believes that interleaved spectrum will **not** be adequate on its own to deliver a viable local TV service to many parts of the UK.
202. ULTV notes that this Consultation requests views on potential uses for interleaved and lower-cleared spectrum. However, around 70 per cent of the spectrum traditionally used for analogue TV is being retained by Ofcom and government for the roll-out of the six existing UK-wide DTT multiplexes. Given that Ofcom has refused to ever conduct any dedicated consultation on the best use of this capacity, ULTV believes it is important to briefly re-state its views.

⁴⁰ Independent Television Commission (January 2003), *Local specific and event specific restricted service licences – notes for the guidance of licence applicants (issue 4)*, ITC: London: www.ofcom.org.uk/static/archive/itc/uploads/Local_Television_RSL.doc

⁴¹ ULTV suggests Ofcom consider options for a range of local DTT trial services in a limited number of areas through the issue of new RSL licences where there is convincing evidence services are able to launch rapidly.

203. ULTV believes that, irrespective of Ofcom's approach to the award of interleaved spectrum, at least one video stream should be reserved on an existing UK-wide DVB-T multiplex for a new local TV network (the "Channel 6" proposal).
204. ULTV proposes that Channel 6 is developed as a federation of independent local TV franchises. So-called 'add/drop' technology would enable Channel 6 franchise-holders to transmit their local schedules from up to 81 DTT transmitter sites across the UK. ULTV submitted a briefing paper on the Channel 6 proposal as part of its response to Ofcom's second statutory review of public service broadcasting.⁴²
205. ULTV agrees with Ofcom's observation that the adoption of 'add/drop' technology offers:
- "the most consistent and convenient solution, and potentially offers the widest reach for local TV."*⁴³
206. ULTV was therefore shocked when Ofcom declared (without conducting any objective analysis, research, consultation or impact assessment):
- "Although we recognise that add/drop is a technically feasible option on either an existing or additional national multiplex, the proposal suffers from a number of fundamental disadvantages that mean that we do not support its implementation."*⁴⁴
207. ULTV is pleased that Ofcom has since moderated its opposition to the Channel 6 proposal. Ofcom stated in January 2009:
- "Any recommendation now to reserve capacity for local television through a videostream on an existing....multiplex would... require further work..."*⁴⁵
208. ULTV is disappointed that, Ofcom has still not conducted any dedicated consultation on the enabling policy options to support and develop local TV.
209. ULTV believes that Channel 6 proposal is the only viable option for a successful new local TV network:
- it is the only option likely to offer good coverage to the majority of TV sets (both main sets and secondary sets); and
 - it is the only option likely to be capable of being introduced rapidly on a UK-wide basis.
210. ULTV understands that interleaved spectrum may be relatively plentiful in Scotland and could prove adequate to deliver a near-universal local TV network north of the

⁴² ULTV (December 2008), *A 'sixth' public service network for the UK – How Channel 6 would work – ULTV submission to Ofcom*, Briefing Paper, ULTV: Sheffield: http://www.ofcom.org.uk/consult/condocs/psb2_phase2/responses/ultv_annec.pdf

⁴³ Ofcom (January 2006), *Digital Local - Options for the future of local video content and interactive services*, Ofcom: London: http://www.ofcom.org.uk/tv/psb_review/digital_local/digital_local.pdf

⁴⁴ Ofcom (December 2007), *Digital Dividend Review – A statement on our approach to awarding the digital dividend*, Statement, Ofcom: London: <http://www.ofcom.org.uk/consult/condocs/ddr/statement/statement.pdf>

⁴⁵ ULTV agrees that a dedicated consultation is required to review a range of issues of importance to the development of the Channel 6 proposal. Assuming acceptance of the principle of add/drop, there are a number of matters which ULTV considers to be simply resolved but will still require addressing including, by way of example, issues regarding the integration of service information between Channel 6 and multiplex providers. Source: Ofcom (January 2009), *Ofcom's Second Public Service Broadcasting Review – Putting Viewers First*, Statement, Ofcom: London: http://www.ofcom.org.uk/consult/condocs/psb2_phase2/statement/psb2statement.pdf

English border. If so, then 'Channel 6' capacity in Scotland could potentially be used for alternative services such as a new Scottish Network (subject to consultation this could be an entirely new service or a form of partnership with the existing Channel 3 licence holder in Scotland, new local TV services and/or Channel 6).

211. Whilst ULTV strongly advocates reserving capacity on a UK-wide multiplex for Channel 6, it does not wish to see others denied the opportunity to launch incremental local TV services in interleaved spectrum. ULTV believes that Channel 6 franchises would complement (but not substitute) local TV services carried on Community Multiplexes:

- due to transmitter site configurations, Channel 6 franchise areas may sometimes be larger than local TV areas reliant on interleaved spectrum – enabling different types of larger and smaller local TV areas to emerge targeting specific geographic communities;
- to maximise viability Channel 6 franchise holders may wish to provide 'plus1' or other enhanced video and interactive services on Community Multiplexes alongside their 'core' Channel 6 service;
- community media groups, independent producers, local media operators and others may wish to access interleaved spectrum to provide complementary and alternative types of services targeting geographic communities and communities of interest.

212. There are three options to deliver Channel 6 prior to or around the completion of UK digital switchover in 2012:

- reserving capacity on a so-called 'public service' multiplex – for instance by re-allocating an existing video stream granted to either the BBC, Channel 3 or Channel 4 licence holders (e.g. ITV2⁴⁶);
- reserving capacity on Multiplex A operated by SDN – for instance by re-assigning an existing video stream granted to Five (e.g. Fiver, Five USA); or
- reserving capacity on Multiplex C or D operated by Arqiva – for instance part of the incremental capacity which will become available as a result of mode change at digital switchover on a region-by-region basis.

213. Carriage on a 'public service' multiplex has the advantage of coverage to most of the last 'ten per cent' of the population not served by the so-called 'commercial' multiplexes. Ideally, ULTV would prefer carriage on a 'public service' multiplex but recognises that carriage on a 'commercial' multiplex may be regarded as generally acceptable and cost-effective (potentially supplemented by judicious use of 'in group' interleaved spectrum to 'plug gaps' where practical at major relay sites).

214. ULTV believes that Channel 6 franchises should be awarded by beauty parade and capacity made available to operators at no greater than 'cost' price (reflecting the legitimate costs of multiplex operation). ULTV does not believe that Channel 6 operators should be required to compensate DTT gatekeepers for the value of spectrum which they themselves have never paid for.⁴⁷

⁴⁶ ULTV notes that Ofcom recommended (as part of its statutory review of public service broadcasting) that Channels 3 and 5 should be limited, in the future, to only one reserved standard definition and high definition video stream. Source: Ofcom (January 2009), *Ofcom's Second Public Service Broadcasting Review – Putting Viewers First*, Statement, Ofcom: London: http://www.ofcom.org.uk/consult/condocs/psb2_phase2/statement/psb2statement.pdf

⁴⁷ ULTV has also argued in the past that the BBC may reasonably be expected to contribute disproportionately towards the cost of universal service obligations (i.e. servicing DTT relay sites) as this is a public service obligation which pure commercial operators might be unlikely to ordinarily be willing to engage in.

215. ULTV notes that the distinction between ‘public service’ and ‘commercial’ multiplexes was invented by Ofcom and has no basis in statute. ULTV believes a strong case can be made that all DTT operators (not just ‘public service’ operators) should be required to reserve at least some capacity for the television services most demanded by citizens – not just the television services willing to pay the highest rents.
216. It is possible to introduce a Channel 6 network without any existing services being lost to the vast majority of DTT homes – including any of the most marginal services on DTT. Even if Ofcom/government were minded to reserve capacity on a ‘public service’ multiplex for Channel 6 it would still be straightforward to use existing powers to reserve one of the new incremental video streams on Multiplex C or D for any service displaced. In practice, there is therefore little or no opportunity cost associated with the Channel 6 proposal (the only ‘loss’ being one video stream on a platform which is already crowded with channels offering no public service commitments).⁴⁸
217. Channel 6 would represent only 1 of around 50 video streams on the current DTT platform (and an even lower proportion as the platform continues to grow). The market will therefore have significant opportunities to deliver the wide range of TV and data services demanded by consumers on services that are mostly free of any positive programming obligations from Ofcom.
218. ULTV recognises that significant time has passed since it first advanced the Channel 6 proposal more than two years ago. However, ULTV hopes it may still be possible to ensure that many major UK conurbations have their own dedicated ‘Channel 6’ on DTT for the 2012 Olympic Games and 2014 Commonwealth Games, able to provide local news and information to residents and visitors from around the world.
219. ULTV believes a fundamental question facing broadcast policy makers is whether value to society is maximised by allowing incremental video streams on the DTT platform to all be auctioned to the highest bidder with no public service commitments, or whether some of this capacity should be reserved for use by broadcasters serving local communities.

Other options to secure investment in public service content

220. ULTV believes that there would be considerable interest from new innovative programme providers to shake-up the market for FTA programming by launching new DTT services if capacity were to be made available on more cost-effective terms than offered by DTT’s existing spectrum gatekeepers.
221. Ofcom has produced no research to suggest the public approves of its policy of allowing all new spectrum and DTT capacity to be auctioned to the highest bidder.
222. ULTV finds it difficult to understand why Ofcom and government are prepared to robustly intervene to reserve 70 per cent of the spectrum currently used by analogue television for DTT but not prepared to equally intervene to ensure that this spectrum is used to deliver the content most demanded by citizens and consumers. ULTV believes this is in direct contradiction of the ITC’s promise to oversee the services carried on the DTT platform to maximise public value from public spectrum:

⁴⁸ ULTV is opposed to Ofcom’s decision to allow Arqiva to bundle some of the last remaining capacity on its multiplexes with the ‘spare’ capacity on Multiplex B (available pre-switchover): <http://www.ofcom.org.uk/tv/ifi/tvlicensing/letters/bbc-consent.pdf>

“Crown Castle must sub-license channel supply on multiplexes C and D on fair, reasonable and non-discriminatory terms... In pursuit of range and diversity, changes in channel line-up will need agreement from the ITC...” (our emphasis)⁴⁹

223. ULTV notes that Ofcom chairman, Dr Collette Bowe, has told MPs that the UK is in danger of “*sleepwalking ourselves into a situation where we don’t have high-quality UK original content for our kids*”.⁵⁰ ULTV finds it surprising that Ofcom directors publicly protest about the under-supply of certain programming genres at the same time as allowing multiplex operators to sell DTT capacity at rents that cannot be afforded by new DTT entrants seeking to serve these genres. This appears to ULTV to suggest that Ofcom is aware it is failing in its statutory duties.⁵¹
224. Whilst focused on securing access to retained spectrum for Channel 6 as a local TV network, ULTV believes that some of the network content on Channel 6 is likely to fulfil public service purposes. ULTV also believes a good case can be made for reserving additional DTT capacity for other services willing to enter into meaningful public service commitments (e.g. children’s, news, current affairs, arts and culture).⁵²
225. ULTV notes that the retained spectrum has already been reserved for DTT and there would be no incremental cost to the Treasury if some of this capacity were opened up to new broadcasters willing to enter into public service obligations.
226. ULTV believes that there are a number of potential benefits of licensing a small number of additional channels entering into ‘public service’ commitments in the retained spectrum:
- the potential to secure or protect investment in public service content as part of the licensing process;
 - the potential to secure the services most valued by consumers and citizens rather than the services which most inflate the profits of monopoly gatekeepers seeking to auction ‘their’ DTT capacity to the highest bidder; and
 - meeting Ofcom’s statutory duty to secure on a UK-wide basis “*a wide range of television and radio services...calculated to appeal to a variety of tastes and interests*” which may require a more interventionist approach to the assignment of public assets than the Ofcom Board simply allowing them to be auctioned to the highest bidder and then noting that we are “*sleepwalking ourselves into a situation*” where UK viewers are denied socially-valuable content.

Channel 5 capacity review

⁴⁹ ITC press release (July 2002), ITC announced decision on digital terrestrial television: http://www.ofcom.org.uk/static/archive/itc/latest_news/press_releases/release.asp-release_id=610.html

⁵⁰ Conlan, Tara, writing at Media Guardian website, *Ofcom chief hits back at James Murdoch criticism*: <http://www.guardian.co.uk/media/2009/dec/01/ofcom-chief-hits-back-murdoch>

⁵¹ ULTV notes original UK children’s-targeted content on digital TV includes public intervention in the form of the BBC (which also invests in family drama such as Doctor Who which might be regarded as meeting the public purposes of children’s programming).

⁵² ULTV notes that Ofcom’s decision to allow BSkyB to launch a ‘Picnic’ subscription service on DTT could mean that many DTT viewers lose access to Sky News – currently the only dedicated news channel on DTT not provided by the BBC. Whilst the audience for dedicated news channels is relatively small, ULTV believes this could be regarded as a loss of plurality in independent FTA news provision particularly at times of major newsworthy events (e.g. the General Election Prime Ministerial Debates). Ofcom and government may wish to consider the benefits of reserving a DTT video stream for a non-BBC dedicated news channel.

227. ULTV suggests that the reported strategic review of Channel 5 Broadcasting (“Five”) by its owners, RTL, provides an appropriate opportunity to Ofcom and government to review the best use of the regulatory assets currently granted to this licensee.
228. ULTV agrees with proposal set out in Ofcom’s second statutory review of public service broadcasting to withdraw two of the three reserved video streams which are currently granted to Five.⁵³ ULTV believes that public value is likely to be maximised by re-assigning these two video streams to new entrants willing to commit to investment in original UK production.
229. ULTV believes that a competitively-licensed DTT channel for children and teens could be a proportionate and targeted response to the often-quoted observation that:
- “The opportunity cost of broadcasting a children’s programme is high on a mixed genre channel – it is content aimed at a very small potential audience.”⁵⁴*
230. ULTV suggests that government and Ofcom consult further on the best use of the two ‘non-core’ video streams currently granted to Five. One option could be to grant a video stream to a new dedicated children’s channel with the capacity assigned to the party willing to enter into the most convincing and binding commitments to invest in original UK production for children and teens.

Lower cleared spectrum

231. Following the completion of digital switchover, ULTV believes lower cleared spectrum is able to deliver a wide range of new DTT services. Indeed, ULTV believes that the existence of lower cleared spectrum even further reduces the (already negligible) opportunity cost of intervention to support the interests of the public in the award of ‘in group’ interleaved spectrum.
232. ULTV is not convinced that Ofcom’s policy of allowing a spectrum gatekeeper to acquire lower cleared spectrum at auction will necessarily best serve the public interest. ULTV believes that many of its concerns regarding spectrum gatekeepers controlling interleaved spectrum equally apply to the lower cleared spectrum.
233. ULTV believes that objective analysis would be likely to suggest significant risks to adopting a laissez-faire approach to the release of lower cleared spectrum. Ofcom is aware that almost no other European territory is currently proposing such an approach for this very reason.
234. ULTV notes that Ofcom’s auction approach could result in a small number of parties (or even just one party) acquiring the whole of the lower-cleared band and operating as a dominant spectrum gatekeeper.
235. ULTV acknowledges that the benefits of modifying a ‘market led’ approach would need to be carefully weighed against the costs and risks of intervention. However, ULTV believes that it would be against the public interest to allow a gatekeeper to acquire the lower cleared spectrum and become a virtual monopoly supplier of DVB-

⁵³ Ofcom (January 2009), *Ofcom’s Second Public Service Broadcasting Review – Putting Viewers First*, Statement, Ofcom: London: http://www.ofcom.org.uk/consult/condocs/psb2_phase2/statement/psb2statement.pdf

⁵⁴ Peter Phillips, Ofcom Partner for Strategy and Market Development, speaking to the Westminster Media Forum session on the Future of Children’s Television Programming (December 2007): <http://www.ofcom.org.uk/media/speeches/2007/12/wmfdec07>

T2 capacity for high definition (“HD”) or other services (all capacity on Multiplex B being assigned to public service broadcasters by the BBC or government/Ofcom).

236. ULTV believes that the value of DTT capacity risks being artificially inflated by (i) spectrum gatekeepers controlling supply and (ii) the desire of incumbent broadcasters to acquire capacity to prevent new entrants from fragmenting audiences. In theory, a significant increase in capacity should decrease rents. ULTV is concerned that the opposite will happen if Ofcom allows spectrum gatekeepers to acquire lower cleared spectrum and control supply without effective regulatory oversight.
237. To ensure that new spectrum applications are made available across the UK (rather than only to those living in major urban conurbations) ULTV believes that Ofcom should further consider the benefits of imposing ‘use or it lose it’ and positive coverage conditions.
238. ULTV believes that, before finalising what intervention is most appropriate in the lower cleared spectrum, Ofcom should prioritise ensuring that existing interventions are maximised for the public benefit. ULTV does not understand how Ofcom can reach a view on future policy when it has failed to ever review the effectiveness of its existing policy which allows incremental DTT capacity to be auctioned to the highest bidder. ULTV notes Ofcom has reneged on its pledge to conduct a review of whether the market for wholesale DTT capacity is operating efficiently.⁵⁵
239. ULTV acknowledges the importance of ensuring that any final policy decisions on the lower cleared spectrum are subjected to adequate research and analysis. ULTV believes Ofcom’s review should focus on what measures may be necessary to address evidence of market failure and ensure that spectrum gatekeepers are not at liberty to abuse their position in the supply of scarce capacity to end users.

Band manager award

240. The ULTV proposal for Community Multiplexes has been significantly inspired by the consultation document produced for the Conservative Party by former Johnston Press chairman, Roger Parry, in summer 2009 (the “Parry Report”).⁵⁶ This suggested interleaved spectrum could be made available for a new network of local TV stations.
241. ULTV has in the past expressed concerns about Ofcom’s approach to policy making and the size of its overall budgets. However, ULTV has been impressed by the manner in which Ofcom has undertaken its broadcast licensing functions in particular in relation to community radio.
242. ULTV believes that, on balance, Ofcom possesses experience in television and radio licensing to take on much of the role of the band manager envisaged by the Parry Report. ULTV believes this would be an efficient use of Ofcom’s existing licensing resources and expertise. However, Community Multiplex licensees would play an important role as ‘local’ band managers in the selection of local DTT services and in the efficient operation of multiplexes.

⁵⁵ Ofcom (October 2006), *Review of wholesale digital television broadcasting platforms – Update of review*, Statement: <http://www.ofcom.org.uk/tv/ifi/marketreviews/wholesaledtvb/review.pdf>

⁵⁶ Parry, Roger (July 2009), *Creating viable local multi-media companies in the UK*, Conservative Party: London: http://www.conservatives.com/News/News_stories/2009/07/~/-/media/Files/Downloadable%20Files/Creating%20Viable%20LMC%20Report.ashx

243. ULTV anticipates that each Community Multiplex licensee will seek to develop innovative services in conjunction with local groups. ULTV believes that this will lead to best practice emerging and ultimately lead to more innovative use of spectrum than might be the case if one single UK-wide 'band manager' was to seek to roll-out a quasi-UK DTT multiplex following a generic 'formula' in all major conurbations.
244. ULTV welcomes Ofcom's decision to postpone its award of a PMSE band manager.⁵⁷ ULTV considers the original premise for the band manager award (a first step towards a so-called 'market-led' approach to this spectrum) to be misguided.
245. ULTV has argued that it would be unacceptable for a state-appointed band manager to be granted the freedom to abuse their market power in the supply of spectrum to either PMSE or DTT users. If proceeding with the appointment of any interleaved band manager in the future, ULTV believes that Ofcom must ensure the licence terms fully protect both PMSE and DTT users' access to spectrum.
246. ULTV further believes that Ofcom should not allow an existing dominant supplier of DTT capacity to become an interleaved band manager. ULTV believes there is good reason for Ofcom to take management of interleaved spectrum fully in-house and to consult again on options for the management of interleaved spectrum (where not released to the market via other means) following the London 2012 Games.
247. ULTV understands that Ofcom's original intention was that a PMSE band manager would be in place by now with the ability to make spectrum available 'on demand' to local TV users. ULTV understands the reasons why this band manager award has been cancelled / postponed. ULTV believes this presents an opportunity for Ofcom to immediately consult on the commencement of Community Multiplex licensing.

Interoperability

248. ULTV supports mandatory interoperability but believes this is not enough to secure the successful expansion of the DTT platform.
249. For many years UK consumers have invested in digital switchover through the licence fee, gifted spectrum and, directly, by upgrading reception equipment. ULTV believes that it would be unacceptable for a major beneficiary of this public investment – incumbent DTT multiplex operators – to fail to cooperate to ensure that existing DTT users are aware of new DTT multiplexes when they launch services.
250. The technology exists for all DTT users to be made aware when new DTT multiplexes launch through on-screen messages and, for some receivers, over-the-air updates. ULTV expects Ofcom to compel incumbent DTT multiplex operators and broadcasters to activate these messages and updates on a region-by-region basis as Community Multiplexes launch.
251. ULTV notes that these methods are already used to support the digital switchover process. However, ULTV does not believe that it is in the interests of citizens or consumers to miss out on new local DTT services meeting public purposes.
252. ULTV members do not see why incumbent multiplex operators should be the exclusive beneficiary of the public's investment in digital switchover. ULTV suggests it is neither practical or desirable for small-scale Community Multiplex operators to

⁵⁷ Ofcom (April 2010), Programme-making and special events – Future spectrum management, access and availability, Interim Statement, Ofcom: London: <http://www.ofcom.org.uk/consult/condocs/bandmanager09/statement/statement.pdf>

expend significant marketing budgets merely to make viewers aware of their requirement to retune their receivers in order to obtain new services.

253. ULTV expects Community Multiplex to play a productive role in the development of the DTT platform but believes incumbent operators should not be granted the opportunity to undermine this expansion. In addition, ULTV believes that Ofcom propose that automatic re-tunes become standard for all new receivers in future editions of the 'D Book' produced by the Digital Television Group.

Priority on electronic programme guide ("EPG")

254. ULTV believes that EPG priority is critical to the success of a new tier of local TV stations and the stimulation of investment in high quality content.

255. ULTV is concerned that the value of EPG priority on all platforms is not currently being fully captured for the public benefit. Instead, the value of EPG priority is generally being privately appropriated by whichever companies managed to acquire high positions in previous EPG 'land grabs'.

256. ULTV believes that there is a strong case for Ofcom to create an expanded 'public service' section at the start of the DTT EPG. The 'public service' section of the EPG might eventually be expected to carry up to around 10-20 different FTA services (the exact number could vary on a region-by-region basis). ULTV proposes that any new or existing local or UK-wide mixed-genre service would be free to apply to Ofcom for 'public service' status on DTT within their transmission area.

257. Under ULTV's proposal, a service provider would agree to enter into binding public service commitments which would be written into their broadcast licence (e.g. provision of local news or investment in original UK content). In return for these commitments, a broadcaster would be allocated a priority EPG position by Ofcom – typically enabling them to appear on the first or second page of the EPG.

258. If a service provider wishes to reduce its public service obligations it would be at risk of losing its EPG priority.

259. ULTV believes the main benefits of its proposal are:

- the benefits of EPG priority would be extended beyond the existing five analogue incumbent networks thereby encouraging fair and effective competition;
- the value of EPG priority would be captured for the benefit of the public in line with Ofcom's statutory duties to citizens and consumers;
- the proposal would help – rather than hinder – incumbent services which invest in original UK content (potentially including ITV2 and E4) by allowing 'sister' services to apply to gain EPG priority and potentially be placed in closer proximity to their 'parent' services;
- the system could be overseen by Ofcom's existing Content Committee and staff with minimal cost or bureaucracy and with the onus placed on broadcasters to demonstrate compliance (e.g. as part of Ofcom's existing annual reporting process);
- additional investment in public service content could be secured with no direct cost to the UK Treasury; and
- a fairer and more equitable system for assigning EPG priority would create a more level playing field between the incumbent public service broadcasters and all other services for the benefit of audience and advertisers.

260. ULTV is concerned that, if Ofcom does not take appropriate action to ensure new programme services contributing to public value are granted EPG priority, then there is a strong risk such services will automatically be relegated towards the bottom of the EPG. This is likely to have severe repercussions for the viability of such services and their ability to invest in original content.
261. ULTV notes that Ofcom recognised the value of EPG priority in its second statutory review of public service broadcasting. Ofcom stated:
- “We currently value prominence for the existing (three) commercial PSBs taken together at a minimum of £30m a year. This lower bound is informed by what stakeholders have told us, but under models where the benefits of public service status are open to a wider range of providers, other broadcasters could value a prominent slot more highly than those that currently occupy them.”⁵⁸*
262. Ofcom will understand that EPG priority on DTT – even conservatively valued at £10 million per annum – would be likely to represent a significant proportion of the aggregate programming budget of a new network of local TV stations.
263. The Competition Commission recently endorsed the view that ITV plc continues to have a dominant position in the advertising market and therefore requires regulatory price controls. One of the advantages the Competition Commission noted ITV plc enjoyed over its rivals was a prominent EPG position which is a factor hindering the success of new entrants:
- “In addition, the success of entry or expansion is dependent on, among other things, the position of a channel in the electronic programme guide (EPG)...”⁵⁹*
264. ULTV looks to Ofcom to use all of the regulatory assets at its disposal to protect and enhance the range of TV services available to viewers on the UK’s number one TV platform - DTT. ULTV does not expect that the majority of viewers will necessarily be aware that the ‘public service’ section of the EPG is separate from the ‘general entertainment’ section. A typical viewer is likely to continue to regard this as simply the start of the ‘general entertainment’ section of the EPG.
265. ULTV does not believe that a ‘one off’ review of Ofcom’s “Code of practice on Electronic Programme Guides” would cause any significant challenges. ULTV notes that a review of the DTT EPG may now be overdue since all BBC services and now all Channel 4 services (under the Digital Economy Act 2010) may be regarded as ‘public service’. ULTV believes that it would be fair to consider allowing all major investors in UK original content (potentially including the ‘ITV’ portfolio of channels) to be prioritised on the EPG listings for DTT (the platform where FTA services gain disproportionately large audiences).
266. ULTV acknowledges the importance of setting clear objective criteria for selecting services which can apply for inclusion in the ‘public service’ section of the DTT EPG. Ofcom would not necessarily be obliged to award all EPG places within the ‘public

⁵⁸ Ofcom (September 2008), *Ofcom’s Second Public Service Broadcasting Review – Phase 2: preparing for the digital future*, Consultation, Ofcom: London: http://www.ofcom.org.uk/consult/condocs/psb2_phase2/psb2_phase2.pdf

⁵⁹ Competition Commission (May 2010), *Review of ITV’s Contract Rights Renewal Undertakings – Final Report*, Competition Commission: London: http://www.competition-commission.org.uk/inquiries/ref2009/itv/pdf/final_report.pdf

service' section immediately; this section could expand or contract over time and all awards could be subject to periodic review on a region-by-region basis.⁶⁰

267. ULTV anticipates that the benefits of EPG priority will be highly valued by broadcasters. As a result, ULTV would expect broadcasters to compete aggressively for inclusion and retention in the 'public service' section and for this competition to significantly stimulate investment in original UK content meeting public service purposes.
268. ULTV notes that there are already significant regional variations within the DTT EPG with no apparent harm to the public. For example, position 8 on the DTT EPG is currently used in Wales (for S4/C) and for one hour a day in Scotland (for TeleG) but not at all in England or Northern Ireland. ULTV believes there is no good reason why there should not be appropriate regional variations as new geographically targeted television services develop.
269. ULTV proposes that Ofcom recommend to government that all services awarded a place within the expanded 'public service' section of the DTT EPG should be granted the automatic right to claim free carriage on cable ("Must Carry" status) as set out below.
270. ULTV further proposes that all services awarded EPG priority on the DTT platform should be free to apply for priority access to any spare capacity on Multiplex B (assigned by the government to DVB-T2 offering the ability to provide high definition services on DTT).
271. ULTV continues to strongly argue that 'channel 6' on DTT should be reserved as a 'local' channel on both DTT and cable so that all viewers in all parts of the UK are able to rely on this channel as a destination for local programming – regardless of where they live.
272. ULTV hopes that its proposals for EPG priority will gain broad support from industry. However, if Ofcom is not minded to radically amend its EPG Code at this time then ULTV believes a more modest amendment will be required to ensure that all local TV services are able to gain the benefit of immediate EPG priority.

'Must Carry' status on cable

273. Must Carry would present an obligation on cable operators to make adequate capacity available to carry all TV services available within the expanded DTT 'public service' section of the EPG on a region-by-region basis.
274. Under this proposal, a cable operator would be required to offer 'free carriage' reasonably matching the coverage area of the service provider (i.e. the obligation would not extend beyond the Ofcom-produced transmission coverage area of a local TV service). The cable operator would carry the service 'free to air' and there would be no exchange of payments between any parties.
275. ULTV believes that it should be at the discretion of service providers whether they wish to accept the Must Carry offer – if they wish to seek to negotiate more financially

⁶⁰ ULTV does not at this stage propose that Ofcom seek to directly assign positions on the satellite or cable EPGs as ULTV does not regard these platforms as having the same critical importance to the delivery of FTA public service content as the DTT platform. However, ULTV does propose that any service which is awarded a position in the 'public service' section of the DTT EPG can apply to be treated as a 'public service' under the terms of the EPG policies operated by Sky, Freesat and Virgin Media.

advantageous terms with cable operators for carriage then they should remain free to do so.

276. ULTV does not anticipate that Must Carry will have any material impact on the businesses of cable platform providers as the majority of services awarded EPG priority are likely to already have access to cable carriage if they wish to do so. ULTV believes the main beneficiary of Must Carry status would be local TV services who often (but not always) have found it difficult to negotiate access to the cable platform partly due to administrative challenges.
277. Cable providers have the benefit of exclusive licences to lay their cables in public highways. ULTV believes that cable providers should honour the spirit of their original licence awards which often included commitments to carry local TV services. ULTV does not believe that cable viewers should be denied access to local TV channels for no good reason other than the intransigence and/or administrative inefficiency of cable platform operators.
278. ULTV does not believe that Must Carry status on the satellite platform (Sky and/or Freesat) is likely to be required as service providers who wish to gain access to this platform seem to generally be able to do so without undue difficulty (albeit Sky EPG positions currently need to be acquired). However, ULTV suggests that the government and Ofcom keep this under review.

Ofcom Broadcasting Code and Code on Scheduling and Transmission of Advertisements (“COSTA”)

279. ULTV believes that the Ofcom Broadcasting Code and COSTA should be urgently reviewed for the benefit of local TV operators.
280. As Ofcom is aware, broadcast services which are not capable of being received in more than one European Union territory are not covered by the Audio Visual Media Services directive. ULTV believes this provides an opportunity for Ofcom to liberate services which are only available on local DTT multiplexes and/or cable platforms from some of the more onerous regulations set out in COSTA and the Broadcasting Code.

Channel 3 regional news

281. Ofcom stated in the executive summary of its submission to the government’s Digital Britain review:

“ITV plc is unwilling to pay for regional news in England beyond 2010/2011 as the costs of doing so outweigh the benefits of PSB status.”⁶¹

282. ULTV is underwhelmed by arguments that Channel 3 licences are facing ‘deficit’. ULTV notes that the three main companies within the Channel 3 network have all announced in their annual reports that their Channel 3 licences made substantial profits in the year ended 31 December 2009 – despite being in the midst of a severe advertising recession:
- STV Group plc’s broadcast division produced a profit of £7.6 million on turnover of £77.8 million;

⁶¹ Ofcom (15 May 2009), *Independently funded news consortia, Ofcom proposal to Digital Britain* (marked “Strictly Private and Confidential”)

- UTV Media plc's broadcast division produced a profit of £5.3 million on turnover of £34.4 million; and
 - ITV plc's broadcast division produced a profit of £120 million on turnover of £1.6 billion.
283. ULTV believes the UK public has a legitimate right to probe the detail of how a quasi autonomous non-governmental organisation is expending public assets on behalf of the UK public.
284. ULTV notes that, in a reversal of previous policy, Ofcom has refused to be open and transparent about its analysis of the costs and benefits to Channel 3 operators of maintaining their public assets. However, ULTV is confident that objective analysis would demonstrate there is no plausible prospect of early licence surrender by any Channel 3 operators:
- there is considerable evidence that Ofcom has under-estimated the benefits of retaining Channel 3 licence assets whilst over-estimating the incremental costs of licence obligations; and
 - Ofcom appears to have taken inadequate account of the many costs and risks associated with early licence surrender including statutory fines and loss of revenues which would result from audience fragmentation when Channel 3 assets are re-assigned to a competitor.
285. ULTV is concerned that Ofcom's refusal to fully publish the evidence to justify its claim that Channel 3 companies are facing "deficit" is a breach of its duty under Section 264 of the Communications Act 2003, to publish:
- "every (public service broadcasting) report...as soon as practical after its preparation is complete."*
286. ULTV recognises that many of the most highly-valued licence obligations imposed on Channel 3 operators are likely to have a very low (if any) opportunity cost. For example, analysis commissioned by Ofcom from Magentum concluded:
- "...news is less costly per hour than much other peak time programming..."⁶²*
287. Ofcom has been warned by industry analysts that it is not possible to simply add the opportunity cost of different programme genres to reach a robust view on the aggregate cost of Channel 3 licence obligations:
- "We did not model the impact of "inheritance" effects, whereby a change in the schedule might have knock-on effects on the audiences of subsequent programmes. Our model was constructed to estimate the impact of removing each PSB genre separately... adding up the opportunity costs for each genre to reach an estimate of the total cost imposed on ITV1 by all its PSB genre obligations taken together is likely to give a less reliable estimate...."⁶³*

⁶² Ofcom (June 2007), *New News, Future News - The challenges for television news after Digital Switch-over*, Discussion document, London: Ofcom: <http://www.ofcom.org.uk/research/tv/reports/newnews/newnews.pdf>

⁶³ Foster, Robin, Egan, Jim and Simon, Jonathan writing in 'From public Service Broadcasting to Public Service Communication' (edited by Damian Tambini and Jamie Cowling), IPPR: London: http://www.ofcom.org.uk/tv/psb_review/reports/psb/m_psb.pdf

288. ULTV notes that Ofcom currently imposes some programming quotas on Channel 3 licensees that it's Chief Executive, Ed Richards, has said it would "*rather not be doing*".⁶⁴ ULTV believes this contradicts Ofcom's evidence to the government supporting the imposition of these very quotas.⁶⁵ However, Ofcom has discretion to reduce the regulatory burden currently imposed on Channel 3 operators should it be minded to do so.
289. It appears to ULTV to be paradoxical for the Competition Commission to deliberately depress ITV1's revenues (on the basis of its dominant and privileged status) whilst Ofcom proposes a cash bail out to help meet the cost of ITV1's licence obligations (on the basis it requires urgent public subsidy).⁶⁶
290. In 2007, Michael Grade, at the time Executive Chairman of ITV plc, told the House of Commons Culture, Media & Sport Committee that regional programming was a "*huge part of the brand value of ITV*"; that a "*regional connection in the post-analogue world is one of the great unique selling propositions of ITV*", and that regional news is the "*core*" of ITV.⁶⁷ ULTV expects the new management of ITV plc to agree with these sentiments.
291. ULTV believes that all Channel 3 operators should be required to honour their contractual obligations and continue to supply nations/regions news programming for the foreseeable future.
292. ULTV is confident that local TV will provide valuable debate and discussion programming which will significantly enhance the range and diversity of programming in the nations, regions and localities of the UK. ULTV believes that local TV can complement existing nations/regions news programming on both the BBC and Channel 3 and particularly seek to provide a difference of tone and emphasis in the devolved nations.
293. ULTV believes it is likely that local TV operators would wish to capitalise upon the popularity of local news by broadcasting it more than once an evening and placing significant advertising around bulletins (in contrast to Channel 3 licensees who move advertising minutage away from regional news).
294. ULTV expects local news programming on local TV to help to drive audience to other local and network programming covering issues such as sport, the environment,

⁶⁴ "There are some things I think we would rather get rid of... there is detailed regulation still in terms of quotas for ITV and Five ... that is done on a line-by-line, in some cases genre-by-genre basis and our proposal in this area is that ITV and Five need to be freed up to be strong commercial networks. But we still do some detailed regulation in that area which, to be honest, I think we would rather not be doing." Ed Richards questioned by a joint committee of the House of Commons Culture, Media and Sport Committee and Business Investment and Skills Committee on 1 December 2009, available on the Parliament video player at 49 minutes: <http://www.parliamentlive.tv/main/Player.aspx?meetingId=5266>.

⁶⁵ Ofcom told the UK Government:

"More broadly, by bringing the ITV plc licences back into balance, introducing IFNCs will also ensure the **continued provision of ITV plc's other PSB obligations**, such as:

- High quality productions
- Out of London productions
- Independent quotas
- Current affairs programming

All of these outputs are highly valued by audiences and are at risk if the ITV plc licences are left to fall into deficit." (Ofcom emphasis) Source: Ofcom (June 2009), *Strictly Confidential, Regulatory levers to address the projected deficit in the ITV plc licences*, Ofcom submission to Government (redacted version)

⁶⁶ Competition Commission (May 2010), *Review of ITV's Contract Rights Renewal Undertakings – Final Report*, Competition Commission: London: http://www.competition-commission.org.uk/inquiries/ref2009/itv/pdf/final_report.pdf

⁶⁷ House of Commons Culture, Media and Sport Committee, *Public Service Content – Final report of session 2007-08, Volume 1, Report, together with formal minutes*, The Stationery Office: London: <http://www.parliament.the-stationery-office.com/pa/cm200708/cmselect/cmcomeds/36/36i.pdf>

health, education, arts, culture, history, religion and social action. ULTV anticipates much of this programming being produced by local producers and community organisations. ULTV notes Channel 3 has generally abandoned this type of content.

295. ULTV believes that there are potential opportunities for a new network of local TV stations to work with ITV plc as well as other major media groups. ULTV believes there will be commercial opportunities for local TV operators to sell their own local news material and other productions assuming a fair and open market. Potential buyers may include the BBC, Channel 3 licensees, commercial radio stations and network news operators.

Flaws in Ofcom’s local media research

296. Ofcom’s deliberative research programme for its ‘digital dividend review’, carried out by Holdman Pearmain and ORC International for Ofcom in 2006, demonstrated that citizens place access to “local news and information” and “programmes about your community” higher than any other TV-related service as the table below demonstrates.⁶⁸

Table 2 Proportion rating each statement among the most important issues (rankings relate to value to society)

Computers in public buildings are able connect to the internet at low cost	61%	} Local issues score highly
Local news and information are available on your TV at home	58%	
Local news and information about your area is available from at least one media source	54%	
Programmes about your community, local people and events are available on your TV at home	51%	
More channels are made available on Freeview	50%	
High speed mobile internet connections are available – throughout the UK, including the most rural areas	48%	
The latest mobile phone services are available - throughout the UK, including the most rural areas	47%	
Channels broadcast in HDTV are affordable to the vast majority of people	44%	
Mobile TV is affordable to most people	41%	
High speed mobile internet connections are available in towns and cities	41%	
HDTV is available throughout the country	39%	
HDTV is available on Freeview as well as on cable and satellite TV	39%	
The latest mobile phone services and technologies are available in towns and cities	38%	
In addition to your TV at home the main terrestrial channels are made available on new technologies such as mobile TV and the internet	38%	
Mobile TV allows people to access television programmes at times when they wouldn’t normally be able to see them	33%	
Mobile TV is available throughout the country	33%	
In addition to standard broadcast, the main five television channels are available in HD format	32%	

Q. PG7. “These are the statements you think are most important for UK society as a whole. Please can you now order these statements to show me which one is most important down to the one you think is least important. Remember, we are talking about importance for UK society as a whole”

⁶⁸ Holden Pearmain and ORC International (December 2006), *A report of consumer research conducted for Ofcom by Holden Pearmain and ORC International for Ofcom’s Digital Dividend Review*, <http://www.ofcom.org.uk/consult/condocs/ddr/mktresearch/research.pdf>

297. Ofcom is in possession of considerable evidence that the UK public demand programmes about their own community and do not wish to see these services crowded-out by shopping channels or other services with no commitment to public value.

298. Ofcom's research clearly indicates the public place quality over quantity of services on the DTT platform:

*"...it was **unanimously** thought that ensuring universal coverage should come before providing additional channels. In addition to this...the research emphasis was placed more on the quality of services, rather than the quantity of channels. Many of the current Freeview channels were thought to be of **poor quality**, and so the proliferation of new channels would be no guarantee of better quality, and indeed could lead to a 'dumbing down'."*⁶⁹
(our emphasis)

299. ULTV is aware of the criticism that it may not be safe to rely upon focus group conclusions which do not reflect statistically robust sample sizes. However, ULTV sees no interpretation of Ofcom's research to suggest that the public wish to see all incremental spectrum and capacity auctioned to the highest bidder. On the contrary, Ofcom research strongly suggests overwhelming levels of public demand for reserved spectrum for local TV. To quote from Ofcom's 2007 research:

*"The vast majority of participants opted for a future where **everyone** would have access to (at least) one service, as this was felt to be the fairest option."*⁷⁰ (our emphasis)

300. This finding is consistent with Ofcom's first statutory review of public service broadcasting which concluded:

*"...it is clear that the English TV regions as currently defined are far too large... Both our qualitative and quantitative research suggests that people identify most strongly with their neighbourhood, town and city...if there were ways of delivering good quality, cost-effective TV services at this level, we believe they would be significantly more compelling than current regional provision."*⁷¹

301. Further research conducted for Ofcom's second statutory review of public service broadcasting demonstrated that it is not just local news that is demanded by citizens. "Current affairs about my region/nation" also scores exceptionally highly, regarded as important on the main TV channels by 83 per cent of adults. Further, over two-thirds (69 per cent) agreed that it is important to "show a range of programmes about my region/nation aside from news and current affairs"⁷²

302. ULTV questions why Ofcom conducts research only to dismiss it when it does not concur with its pre-determined policy conclusions. However, in recent times Ofcom appears to have adopted a new approach. Instead of researching whether the public

⁶⁹ Holden Pearmain and ORC International (December 2006), *A report of consumer research conducted for Ofcom by Holden Pearmain and ORC International for Ofcom's Digital Dividend Review*, <http://www.ofcom.org.uk/consult/condocs/ddr/mktresearch/research.pdf>

⁷⁰ Ofcom (November 2007), *Digital Dividend Review Market Research 2007 Executive Summary*, Research Document, London: Ofcom: <http://www.ofcom.org.uk/radiocomms/ddr/documents/research07/summary.pdf>

⁷¹ Ofcom (November 2004), *Reshaping television for the UK's nations, regions and localities*, Ofcom: London: <http://www.ofcom.org.uk/consult/condocs/psb2/psb2/nations/nations.pdf>

⁷² Source: PSB Review Survey, Q23, 2260 interview with UK adults aged 16+, October – December 2007: http://www.ofcom.org.uk/consult/condocs/psb2_1/annex6.pdf

agree with its policy proposals, Ofcom has commissioned research on entirely separate issues and then used this to draw conclusions which do not relate to the actual questions asked.

303. In 2008, Ofcom published a discussion document, *Local and Regional Media in the UK* ("Local Media Review").⁷³ ULTV is concerned this document appeared to substantially rely upon a highly selective use of evidence.
304. In the Local Media Review, Ofcom presented the findings of new deliberative research which, prima facie, appeared to demonstrate higher public support for "ensuring the continued provision of regional news" than for "provide more areas with local TV".
305. Upon further examination, ULTV regards Ofcom's Local Media Research exercise as absurd. The terms "regional" and "local" were continuously confused throughout. When focus group participants were asked to choose between expending a mythical cash sum on "regional news" or "local TV" they generally chose the former. However, the exercise was framed so that it was implied there would be no local or regional news on any channel (including the BBC) if they did not agree to provide direct funding to the "regional news" pot.
306. Participants to Ofcom's research assumed they were granting funds for the continuation of local/regional news – it was not made clear to respondents that regional news would continue on the BBC regardless as to how they distributed 'their' funds.
307. It appears obvious to ULTV that participants to Ofcom's research do not wish to see all local/regional TV news abolished with no local or regional news services provided by any channels – including new local TV channels. Indeed, ULTV would expect news programming to come higher in priority than any other genre of local/regional TV programming. In effect, respondents were given no choice if they cared about local and regional news provision but to support Ofcom's proposal.
308. Immediately prior to Ofcom's 'cash distribution' exercise respondents were given an Ofcom presentation which ULTV regards as highly unbalanced and implying that local TV is not viable.
309. What ULTV finds most telling (and strangely purged from Ofcom's Local Media Review) is that there was no enthusiasm demonstrated by focus groups for intervention to maintain regional news on Channel 3. One of the main findings of Ofcom's research was that there is minimal public concern regarding potential loss of regional news on Channel 3:

*"Participants did not say that losing regional TV news would lead to any significant loss of local information... if forced to consider a scenario where only BBC local news existed there are not overwhelming concerns in terms of content. Participants say that the BBC could provide an adequate service. Even participants who prefer ITV news say that news content is largely the same across both channels... There was limited concern over bias. Many participants perceive the BBC as a trustworthy source for local news."*⁷⁴

⁷³ Ofcom (September 2008), *Local and Regional Media in the UK*, Discussion Document, Ofcom: London: <http://www.ofcom.org.uk/research/tv/reports/lrmuk/lrmuk.pdf>

⁷⁴ Ofcom (July 2009), *Review of Local Media, Qualitative Findings, Research document*, Ofcom: London: <http://www.ofcom.org.uk/consult/condocs/morr/reviewlocal.pdf>

310. ULTV believes there can be no question that the public expect Ofcom to regulate the market to secure public interest objectives. Of all the funding options for public service broadcasting (“PSB”) presented by Ofcom to focus groups, gifted spectrum was indisputably the most popular. There is little question participants would have been shocked to learn that existing DTT multiplex operators are not required to enter into public service commitments in return for gifted spectrum assignments:

“Participants were concerned to ensure that any providers receiving spectrum benefits were committed to providing public service content and that they would spend the exact amount equivalent to spectrum benefits on doing so.”⁷⁵

311. ULTV has consistently argued that if Ofcom wishes to base policy on citizen juries it should conduct a fair and balanced trial based on real policy options. ULTV is concerned that Ofcom has published misleading research without even allowing participants the opportunity to put their views on practical policy options to develop local TV. ULTV assumes Ofcom is aware that subjecting its stated policy on spectrum auctions to the rigour of public research is likely to expose the degree to which it is widely opposed by the public.

Business modelling

312. Ofcom has put forward a number of arguments against reserving spectrum for local TV which ULTV regards as grossly unreasonable. One of these arguments is that viewer demand for local TV:

“...could be only an hour or two a day, which will limit the advertising revenues that can be generated...”⁷⁶

313. Ofcom is aware that the average adult only watches television at home for 3.75 hours per day.⁷⁷ If Ofcom’s research is correct and viewer demand for local TV is “*only an hour or two a day*” it would be likely to give local TV one of the highest market shares of any TV network in the UK. ULTV finds Ofcom’s argument that local TV may not be viable because viewers might only watch for “*an hour or two a day*” betrays an extraordinary level of ignorance and abandonment of common sense on local TV policy issues.

314. ULTV notes with concern the manner in which Ofcom has claimed to the House of Commons Culture, Media and Sport Committee that business modelling suggests local TV may not be viable. Ofcom stated in written evidence to MPs:

“Recent analysis conducted during Phase 3 our Second PSB Review shows that even city-based local television may not be profitable outside the major markets of London and Manchester.”⁷⁸

315. ULTV regards this statement as misleading. ULTV questions almost all of the assumption made by Oliver & Ohalbaum in their study (which was conducted with no

⁷⁵ Ofcom (September 2008), *Ofcom’s Second Public Service Broadcasting Review – Phase 2: preparing for the digital future*, Consultation, Ofcom: London: http://www.ofcom.org.uk/consult/condocs/psb2_phase2/psb2_phase2.pdf

⁷⁶ Ofcom (December 2007), *Digital Dividend Review – A statement on our approach to awarding the digital dividend*, Statement, Ofcom: London: <http://www.ofcom.org.uk/consult/condocs/ddr/statement/statement.pdf>

⁷⁷ Ofcom (August 2009), *The Communications Market 2009*, Ofcom: London: <http://www.ofcom.org.uk/research/cm/cm09/cm09.pdf>

⁷⁸ Ofcom (May 2009), *Memorandum from Ofcom*, <http://www.publications.parliament.uk/pa/cm200910/cmselect/cmcomeds/memo/futureformedia/uc3002.htm>

input from ULTV members). Nevertheless, an important conclusion of this study was that a network of local/regional TV channels, based on carefully devised areas, could be highly profitable:

*“The top 10 UK cities would deliver (an advertiser-financed local TV network with) an operating profit of around £12m per year”.*⁷⁹

316. A third party consultancy, Plum Consulting, has suggested that more local TV stations could potentially be viable if Oliver & Ohlbaum were to revise some of their original assumptions:

*“These estimates are for a single broadcasting TV channel that has programming networked...for 6 hours a day and 5 hours of local programming per day in each city...Estimated profitability could however be increased if less local and more networked content...was assumed to be transmitted...”*⁸⁰

317. ULTV notes that the Oliver & Ohlbaum study appears to suggest that a local TV network ceases to be profitable beyond the first 12 largest UK cities. However, this is because Oliver & Ohlbaum were asked to examine the prospects for local TV on a town/city basis and not a county-wide or sub-regional basis as Ofcom has itself suggested may be more appropriate for some areas (and which, in practice, will sometimes be the only option given the location of many DTT transmitters).⁸¹

318. In ULTV's opinion, Oliver & Ohlbaum's business modelling contained numerous flaws.⁸² However, ULTV regards it as extraordinary that Ofcom should dismiss the prospects for a new tier of local TV by claiming to MPs this analysis suggested local TV would “not be profitable”.

319. ULTV has long taken a sanguine attitude towards Ofcom's spin operation, accepting that the regulator has every right to disagree with stakeholders such as ULTV. However, ULTV looks to Ofcom to abide by relevant principles of the Civil Service code which states:

*“You must not...ignore inconvenient facts or relevant considerations when providing advice or making decisions.”*⁸³

320. Previously analysis commissioned by Ofcom and government from a different set of consultants concluded local TV could be viable contingent upon securing access to DTT:

*“...the greatest impact is felt when DTT is extracted, suggesting that this platform is **core** to the delivery of a profitable service...”*⁸⁴ (our emphasis)

⁷⁹ Oliver&Ohlbaum Associates (January 2009), *The Sustainability of local commercial TV: Prospects for big city and community local TV channels*, A report for Ofcom, Oliver & Ohlbaum Associates Limited: London: http://www.ofcom.org.uk/consult/condocs/psb2_phase2/statement/annex4.pdf

⁸⁰ Marks, Phillipa et al, *Estimating the Commercial Trading Value of Spectrum*, A report for Ofcom, London: AEGIS Systems and Plum Consulting

⁸¹ In its first PSB Review (September 2004), Ofcom concluded: “City TV services supplemented by broader coverage (at, say, region or county level) in more rural areas...may prove to be the most effective models.” Source: Ofcom (September 2004), *Ofcom review of public service television broadcasting – Phase 2 - Meeting the digital challenge*, Consultation, London: Ofcom: http://www.ofcom.org.uk/consult/condocs/psb2/psb2/psb_phase2.pdf

⁸² For example in ULTV's view:

- costs were over-estimated;
- the nature and range of revenue sources was misunderstood – if airtime is sold to local advertisers on long-term fixed-rate contracts then share of viewing is unlikely to be an accurate method of predicting turnover; and
- no account was taken of the benefit of public policy support such as EPG priority.

⁸³ Cabinet Office (November 2009), Civil Service Code: <http://www.civilservice.gov.uk/about/values/cscode/index.aspx>

321. If Ofcom wishes to understand the business models for local TV it has had over five years in which to engage in constructive dialogue with ULTV members. ULTV notes that the BBC's plans for local video services (rejected by the BBC Trust⁸⁵) were based on employing around six video journalists per area (in 60 areas) to create circa 25 minutes of new daily local news content (i.e. the equivalent of a daily local news magazine without commercials).
322. ULTV is aware of the argument that local TV might not be of sufficient "quality" to compete in the market against other digital media services. ULTV notes this argument tends to be especially propagated by established companies seeking substantial public subsidy for their own services.⁸⁶ However, the production methodologies which some appear to wish to disparage are broadly similar to those proposed by the BBC for local video and well-established in some overseas territories.
323. All policies have risks but ULTV finds it disappointing that Ofcom appears to have focused so much effort listing unreasonable objections to local TV rather than objectively assessing the policy options to help ensure its success. ULTV would be delighted to have the opportunity to work constructively with Ofcom to consider how best to address some of the challenges local TV services might be expected to face.

DTT transmission is inexpensive

324. ULTV believes that DTT technology is important to help make low-budget local TV stations viable. ULTV notes that a 5kW DVB-T transmitter typically gives the same coverage as a 50kW analogue transmitter (dependent on transmission mode) and, unlike analogue, can broadcast multiple video streams.
325. ULTV believes the main missing piece in the local TV jigsaw is spectrum. It is within Ofcom's power to complete the jigsaw and enable a plethora of new local and community TV services to flourish supporting local news, current affairs, arts, culture and sport. ULTV appeals to Ofcom to act constructively, rather than destructively, and consult on a viable channel map for Community Multiplex licensing.

BBC partnerships

326. The BBC has expressed its desire to enter into a range of partnerships with content providers and, especially, with organisations who are granted 'public service' status by the government or Ofcom.
327. ULTV is exploring the potential for partnerships with the BBC as set out in the ULTV response to the BBC's recent strategy review (copy available on request).⁸⁷

Citizens' Media Fund

⁸⁴ Spectrum Strategy Consultants - now Spectrum Value Partners (November 2005), *The economics of delivering local digital audio-visual and interactive services*, Spectrum Strategy Consultants: London: <http://webarchive.nationalarchives.gov.uk/+http://www.culture.gov.uk/images/publications/051118PLocaldigitalserviceseconomyanalysis10866final.pdf>

⁸⁵ BBC Trust (November 2008), *Local Video – Public Value Test provision conclusions*, BBC: London: http://www.bbc.co.uk/bbctrust/assets/files/pdf/consult/local_video/provisional_conclusions.pdf

⁸⁶ For example, ITN has said: "Unless public funding is provided, regional news services are likely to be either withdrawn or commercial funding reduced to a level that does not permit the services to offer the quality required to compete against the BBC." Source: ITN (September 2009), *ITN response to Sustainable, independent and impartial news; in the nations, locally and in the regions*, ITN: London: www.culture.gov.uk/images/publications/CCE_ITN.pdf

⁸⁷ BBC (March 2010), *BBC Strategy Review*, BBC: London: http://www.bbc.co.uk/bbctrust/assets/files/pdf/review_report_research/strategy_review/strategy_review.pdf

328. In its response to Ofcom's statutory review of public service broadcasting, ULTV suggested a modest fund could be established to support citizen-focused media initiatives. ULTV noted such a fund was envisaged by Section 359 of the Communications Act 2003 and therefore would require no new primary legislation.
329. ULTV wrote in its submission to the government's 2009 'Digital Britain' review:
- "A dedicated fund which supported media training for local community and voluntary organisations could potentially produce thousands of new programme-makers."*⁸⁸
330. ULTV recognises any new public expenditure, given existing pressures on the public finances, would have to be justified against competing priorities. However, ULTV believes the existing Community Radio Fund provides an example of how far small amounts of funding can spread to support the development of community media projects.
331. Whilst a matter for government, ULTV believes at least three potential options could be considered to finance a modest 'Citizen's Media Fund' to enhance community media and programme-making opportunities:
- bringing together a number of separate cross-government departmental projects into a new fund;
 - establishing a dedicated fund supported by the National Lottery; and/or
 - potentially using part of the digital switchover under-spend to create an endowment fund administered by an independent party – ULTV acknowledges the competing pressures on any 'under-spend' (as well as the argument it could be returned to licence fee payers) but argues that an endowment fund would potentially benefit community development for generations to come.

Ofcom's statutory duty to citizens

332. It is difficult for ULTV not to feel let down by Ofcom given it promised to explore the enabling policy options for local TV in its first statutory review of public service broadcasting:
- "There can be no guarantees of automatic digital licences for local TV at this early stage of switchover planning. However, a range of options exist that enable Ofcom to take a fresh look at both the licensing and spectrum allocation process for local television services. These include...allocating a single UHF channel for local TV...(or) allocating a low-capacity multiplex in designated areas of the UK for local TV...This could allow most major towns and cities to have one frequency assigned for local TV..."*⁸⁹
333. Ofcom is aware of stakeholder concerns that it has persistently failed in its statutory duty to consider the implications of policy decisions on citizens. Ofcom states:

⁸⁸ ULTV (January 2009), *A response to 'Digital Britain – The Interim Report'*, ULTV: Sheffield: http://webarchive.nationalarchives.gov.uk/+http://www.culture.gov.uk/images/publications/ULTV_DBIRResponse.pdf

⁸⁹ Ofcom (November 2004), *Ofcom review of Public Service Television Broadcasting, Phase 2 meeting the digital challenge*, Consultation, London: Ofcom: http://www.ofcom.org.uk/consult/condocs/psb2/psb2/psb_phase2.pdf Ofcom further promised in its first statutory review to: "...work with the Government and other parties to explore the options for digital local television, including further analysis to assess spectrum availability, economic prospects and audience requirements for such services..." Ofcom (February 2005), *Ofcom review of public service television broadcasting – Phase 3 – Competition for quality*, Consultation, London: Ofcom: <http://www.ofcom.org.uk/consult/condocs/psb3/psb3.pdf>

“In our forthcoming revision of the internal Ofcom guidelines on policy appraisal we will introduce a requirement to specifically state, where appropriate, the separate interests of citizens and consumers when making our policy decisions....Going forward, we will look to provide greater transparency on how potential conflicts between the interests of citizens and consumers are addressed in our appraisal of policy options.”⁹⁰

334. Ofcom is of course fully aware of its responsibilities. Ofcom Partner, Peter Phillips, stated in July 2007:

“But furthering citizen interests is about promoting a better society: maybe making sure citizens are protected or have access to services they need to participate in society. Pursuing these kinds of goals takes us deep into public policy. In tackling such issues, Ofcom has a lot of discretion – if citizen and consumer interests conflict, statute says we must resolve the issue in the manner we think best in the circumstances. It’s up to us.”⁹¹

335. ULTV looks forward to studying Ofcom’s analysis on “*how potential conflicts between the interest of citizens and consumers are addressed*” alongside a comprehensive impact assessment on Ofcom’s policy for the award of interleaved spectrum.

Equality impact assessment

336. ULTV notes that Ofcom has never carried out a single substantive equality impact assessment on any of its proposals for interleaved spectrum. ULTV trusts Ofcom will correct this omission when publishing further proposals for consultation.
337. ULTV expects local TV to provide a focal point for the community and for local area partnership agendas. ULTV regards community groups and social enterprises as part of the fabric of modern society – often trusted by their users because they are neither state nor market. ULTV expects local TV to provide a voice for voluntary organisations to communicate with citizens – explaining their activities and appealing for wider support.
338. There is considerable evidence the disengaged can be attracted to make a positive contribution to society as a result of involvement in media, gaining skills they can take with them into their working and social lives. Those often marginalised in society – older people, the disabled, young people and ethnic groups could benefit from the opportunity to make programmes and express their voice on a range of services carried by Community Multiplexes.

Conclusion – time to put community first

339. ULTV believes it is truly shocking that, in a modern democracy, most citizens have no access to at least one local TV channel providing access to high quality local news, discussion, entertainment and advertising.
340. ULTV believes that Ofcom’s decision to abolish the dedicated RSL licensing regime for local TV reflects an attack on a fundamental tenet of democracy – an informed citizenship.

⁹⁰ Ofcom (April 2010), *Citizens, Communications and Convergence – A summary of stakeholder responses, and our next steps*, Ofcom: London: http://www.ofcom.org.uk/consult/condocs/citizens/statement/Citizen_Statement.pdf

⁹¹ *Institute of Economic Affairs: Working Lunch - Unelected and unaccountable? The role of the regulator in setting public policy*: <http://www.ofcom.org.uk/media/speeches/2007/07/iea0407>

341. Ofcom has a primary duty is to secure the optimal use of spectrum. If spectrum were not a finite resource then Ofcom could simply leave spectrum management to the market. However, Ofcom has been given explicit duties by Parliament to secure the interests of both citizens and consumers.
342. ULTV finds it difficult to avoid the conclusion that Ofcom's so-called 'market led' approach to spectrum management is more accurately a 'market power led' policy which favours the commercial interests of dominant spectrum gatekeepers over citizens and consumers.
343. ULTV is concerned that Ofcom appears to have abandoned its statutory obligation to secure "*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*". ULTV believes Ofcom cannot reasonably place blind faith in unregulated spectrum gatekeepers promoting the interests of citizens and consumers.
344. ULTV is concerned that Ofcom appears to have a deep-rooted fundamental objection to implementing its core statutory duties.
345. ULTV members have sought to engage constructively in all of Ofcom's major projects to date including:
- Ofcom's first review of public service broadcasting;
 - Ofcom's second review of public service broadcasting; and
 - the 'digital dividend' review process.
346. Having expended considerable labours participating in 'consultation' exercises, it is difficult to express the degree of ULTV's frustration at Ofcom's apparent ideological barrier to managing local spectrum in the interests of citizens rather than monopolies. ULTV questions why Ofcom conducts multiple consultation exercises at great expense to industry only to consistently ignore all concerns raised.
347. ULTV believes that if Ofcom proceeds with its misguided auction process it will be responsible for causing lasting damage to local communities. The opportunity exists for Ofcom to provide for one of the most enlightened local TV licensing regimes in the democratic world and not the most repressive. ULTV wishes to see Ofcom act positively on behalf of the citizens whose interests it exists to champion.
348. As Ofcom knows, approximately 37 per cent of UK homes choose not to subscribe to broadband.⁹² ULTV acknowledges public policy initiatives to tackle the digital divide but, as of today, a third of families with children do not have access to broadband.⁹³ ULTV believes that, for many of these homes, FTA television is likely to remain a primary provider of news and information including the provision of locally relevant public service information.
349. ULTV seeks to represent the interests of all sizes of local TV operator – large and small. ULTV believes it is absurd to expect struggling local and community media groups of any size to participate in spectrum actions in competition with speculators and gatekeepers. ULTV believes that access to local news and information on television should be a matter of public policy – not postcode lottery.

⁹² <http://www.broadbandanalyst.co.uk/uk-broadband/63-percent-uk-homes-broadband-connection>

⁹³ <http://www.zdnet.co.uk/news/networking/2010/04/30/millions-of-uk-children-lack-home-broadband-40088809/>

350. ULTV wishes to see spectrum protected for the benefit of communities rather than exploited for the benefit of monopoly gatekeepers. ULTV believes that for Ofcom to allow spectrum gatekeepers to control the interleaved frequencies suitable for local TV would be an act of wanton vandalism and in direct contradiction of its statutory duties.
351. ULTV believes that Ofcom has simply failed to adequately consider the impact of its spectrum policy on local TV. This is perhaps understandable given the many different issues Ofcom was seeking to deal with in its original consultations. However, ULTV suggests it also raises serious questions about the effectiveness of the Ofcom Board, its ability to question analysis and its willingness to engage constructively with stakeholders raising serious concerns.
352. Ofcom's core broadcasting duty is to ensure all citizens have access to a wide variety of high quality programming. The principal regulatory resources at Ofcom's disposal to secure this duty are the award of DTT capacity and EPG priority. ULTV expects Ofcom to use these regulatory resources and not simply grant these privileges to a handful of incumbent analogue broadcasters.
353. ULTV believes the opportunity cost of reserving spectrum access for local TV is a moderate, targeted and proportionate response to the high risk of market failure in the absence of such an intervention.
354. ULTV appeals to Ofcom personnel to put themselves in the shoes of a local viewer denied the opportunity to receive a viable local TV channel carrying news, discussion and community programming because a monopoly spectrum gatekeeper wishes to maximise profits and abuse their market power. This might help Ofcom to understand the anger and bewilderment expressed by many MPs and campaigners regarding Ofcom's current policy to deny local TV the right to gain access to local DTT multiplexes on FRND terms.
355. ULTV hopes and believes that Ofcom will recognise the importance of the issues at stake, listen and respond constructively to the concerns raised.
356. ULTV believes local TV is urgently required to:
- meet a democratic deficit and encouraging active participation;
 - provide a viable outlet for local production and generate new employment opportunities in media across all parts of the UK ; and
 - end Channel 3's virtual monopoly in the sale of terrestrial TV airtime in local markets.
357. It is an established principle that land is protected in the UK for parks and open spaces for the benefit of the community rather than simply sold to the highest bidder. ULTV's proposal for Community Multiplexes is based on the philosophy that special place should be made on DTT for local and community content at risk of being crowded-out by services with the benefit of UK-wide scale.
358. Community Multiplexes would be a 'third tier' of DTT multiplex to complement existing 'public service' and 'commercial' multiplexes. Community Multiplexes would have a primary focus on serving the interests of local communities. No longer would society be held to ransom by rent-seeking spectrum gatekeepers – viewers in a local market would at last receive the rich diversity of programming they truly demand.

359. ULTV envisages Community Multiplexes forming part of the 'glue' of local communities, providing a voice to local people and organisations and an outlet for citizens to use to discuss and promote community development.
360. ULTV believes that the strength of enthusiasm for and engagement with the democratic process is vital to sustaining a healthy representative democracy. ULTV looks to Ofcom to design an award mechanism which maximises the potential for interleaved spectrum to be used to reinvigorate democratic engagement and civil society.
361. ULTV understands that Ofcom has a new Partner for Spectrum Policy who was not involved in the original spectrum policy decisions. At the same time, ULTV puts on record its appreciation for the open dialogue that it has had in recent times with senior Ofcom staff.
362. ULTV believes there is a common sense option. Ofcom now has the opportunity to prove it is not in thrall to spectrum speculators. Now is Ofcom's chance to make a real difference to citizens and consumers. The time has come for Ofcom to put community first.

Response to Consultation questions

363. This submission is intended to be read as a whole (in conjunction with ULTV's joint response with the CMA to Ofcom's consultation on its Draft Annual Plan 2010/11)⁹⁴.
364. ULTV adds some further comments below in response to the questions raised by Ofcom within the Consultation. To assist Ofcom, a number of the paragraphs within this submission are referred to below. However, for the avoidance of doubt, ULTV requests Ofcom give consideration to all of the issues raised in this Consultation response when providing advice or making decisions.

Question 1: Do you have any comments on the application of the protection clause to all new licences for the 600 MHz band and geographic interleaved spectrum?

365. ULTV supports the inclusion of a protection clause in non-DTT licences. ULTV does not see any useful purpose to including a generic protection clause in DTT licences. ULTV believes that DTT licence holders should not be subjected to the risk of 'double jeopardy'. Where a DTT licence holder has agreed with Ofcom its transmission characteristics (including transmitter site(s) and protection ratios) then it cannot reasonably be held responsible for any interference to third parties resulting from negligence on the part of Ofcom's spectrum planners.
366. ULTV accepts that, on a 'case by case' basis, Ofcom may only approve transmission proposals from new DTT licensees on the condition that certain anticipated interference issues are addressed. However, the risk of a rigid generic protection clause is that (dependent on the wording) a DTT licensee could be fully compliant with all Ofcom-imposed transmission characteristics and still find itself liable for unexpected costs resulting from investigating reception complaints in fringe areas. This would potentially create a substantial risk to new DTT licensees which could discourage investment in new services operating on limited budgets.

⁹⁴ <http://www.ofcom.org.uk/consult/condocs/draftannplan1011/responses1/ULTVCMA.pdf>

367. ULTV does not wish to see a lack of a generic protection clause result in over-zealous protection ratios being applied. On the contrary, ULTV believes there are likely to be instances where a suitably-worded protection clause might enable Ofcom to agree to substantially reduce technical licence conditions. Where there is a risk that only a handful of viewers will require new reception equipment to be installed then it may be in the interests of a new DTT licensee to agree to this rather than accept severe restrictions to their transmission proposals.
368. ULTV accepts that, on a case-by-case basis, there may be legitimate grounds for inserting a bespoke protection clause into individual new DTT licences. This could require that interference issues in specified areas are resolved as they come to light. However, ULTV believes this should only apply to viewers within the intended service area who have a suitable rooftop antenna (in line with industry recommendations for fringe areas where appropriate) and which is installed correctly and pointing to the recommended DTT site at the time of digital switchover. ULTV believes a consumer in these circumstances should only be able to apply for an upgrade (passing on expense to a new DTT multiplex operator) if their original reception was free-of-interference prior to the commencement of the new service.
369. ULTV understands there have been many studies on the subject of propagation over recent years with differing conclusions by established experts in the field. Consequently different papers show the different protection ratios that different experts believe are required. The danger is that planners adopt an over-zealous approach whereby safeguard is added to safeguard and to more safeguards so that the net result is overcautious planning for new services.
370. ULTV believes that it is not in the public interest for Ofcom to adopt extreme protection ratios (either for existing DTT or for future DTT services). ULTV is aware that Ofcom has revised its planning guidelines. Nevertheless, ULTV still believes that further flexibility may be required on a 'case by case' basis to allow new DTT operators to agree with Ofcom viable coverage areas for their services and to obtain the optimal use of spectrum in line with Ofcom's statutory duties.
371. ULTV strongly endorses the use of targeted protective measures for both existing and new DTT services. However, ULTV proposes that all issues of protection are reviewed further with a view to seeking a sensible balance to ensure that UK citizens are able to gain the benefit of viable new local DTT services.
372. As Ofcom is aware, any new DTT service has the potential to cause very small disruption to existing DTT reception. ULTV is concerned that incumbent broadcasters and transmission operators are not given the opportunity to object to new DTT services by citing extremely marginal loss of coverage. Ofcom will recall the experience of many analogue RSLs who found themselves often being granted out-of-group frequencies with weak power levels or antenna restrictions which meant they were not able to provide viable services.
373. ULTV believes the transmission challenges faced by many analogue RSLs are well known to and recognised by Ofcom:

*"RSL services have been hampered by the general lack of...frequencies..."*⁹⁵

⁹⁵ Ofcom (January 2006), *Digital Local - Options for the future of local video content and interactive services*, Ofcom: London: http://www.ofcom.org.uk/tv/psb_review/digital_local/digital_local.pdf

374. ULTV is aware of examples of viewers denied the benefit of adequate reception of analogue local TV services because of the theoretical risk that a handful of viewers many miles away with inadequate equipment might have a problem with reception from a small relay site.
375. ULTV understands that issues of 'zero' risk are not practical in spectrum planning. In the 'real world' elements of risk need to be weighed on a daily basis:- governments must decide whether aeroplanes should fly through volcanic ash; individuals must decide whether to drive a car to work. Safety regulations must be applied in a manner which is balanced and responsible so that more than one car can be allowed on the road at a time.
376. DTT is a relatively robust technology and, whilst supporting targeted protective measures, ULTV would not wish to see disproportionate and inflexible measures adopted. At the same time, ULTV believes that there is a case for reviewing the effectiveness (including financial and spectral efficiency) of maintaining some of the smallest DTT relay sites which may be little-used in practice.
377. ULTV expects many DTT users of interleaved spectrum will be operating on limited budgets. However, there may be occasions when operators would benefit from the flexibility to approach Ofcom for the use of 'fill-in' repeaters (potentially using single frequency networks) to maximise coverage within a geographic area.
378. ULTV believes that the public interest is best secured by promoting the extension of the DTT platform through the award of interleaved spectrum ensuring:
- no new DTT service can launch without first approving its transmission site(s) and core transmission parameters with Ofcom – allowing each proposal to be assessed on its merits by Ofcom's planning department;
 - a new DTT service is granted flexibility to tilt its transmission beam or otherwise amend its antenna design to focus reception on its core service area(s) in discussion with Ofcom (subject to full compliance with Ofcom approved restrictions);
 - targeted protective measures are agreed with DTT operators where required to balance a reduction in protection ratios; and
 - any post-launch amendments to agreed transmission parameters are subject to Ofcom's approval.
379. ULTV trusts Ofcom will ensure protection of incumbents is proportionate and targeted rather than rigid and inflexible. New DTT multiplex operators are likely to wish to obtain comfort regarding the coverage they will obtain prior to participating in any licence application process. ULTV believes the inclusion of a single generic 'protection clause' is not necessary for DTT users if technical licence conditions are framed adequately and spectrum planners act competently when planning a new tier of DTT.

Question 2: Do you have any comments on our approach to technical licence conditions for the 600 MHz band and geographic interleaved spectrum?

380. ULTV refers Ofcom to its response to Question 1 (above).
381. ULTV's other comments on technical licence terms for interleaved spectrum are set out in paragraphs 189 to 197 alongside other parts of this submission.

382. ULTV has no comments to add on lower cleared spectrum other than to suggest that technical licence conditions (including any requisite guard bands) relate to the potential alternative uses of the spectrum which will require further research, analysis and consultation.

Question 3: Do you have any evidence using frequency offsets with DVB-T2 EC signals might have an adverse impact on uses of adjacent interleaved spectrum?

383. ULTV has no new evidence to submit to Ofcom on this issue.

Question 4: Do you have any evidence mobile services using the 600 MHz band and geographic interleaved spectrum could cause harmful interference to cable television?

384. ULTV has no new evidence to submit to Ofcom on this issue.

Question 5: Do you have any comments on protecting PMSE in channel 38?

385. ULTV understands that broadcasters and PMSE have always co-existed without broadcasters undertaking any special protective measures. ULTV believes this is fair and reasonable and should continue to be the case post digital switchover.

Question 6: Do you have any comments on non-technical licence issues and the way we propose to approach them?

386. ULTV's comments on non-technical licence issues are set out throughout this submission. ULTV draws particular attention to the issues set out in paragraphs 168 to 186 and paragraphs 248 to 272 of this submission.

Question 7: Do you have any comments on our assessment of the most likely uses of the 600 MHz band and geographic interleaved spectrum? Are there any potential uses we have not mentioned that should be considered?

387. ULTV finds it improbable there will be any demand for access to this spectrum for applications which are not harmonised with Europe. For this reason, ULTV finds it most likely this spectrum will be demanded for broadcast applications and, on a secondary basis, for PMSE and/or 'white space' devices.

388. ULTV notes that DTT is unique in requiring access to this spectrum to expand services capable of being received by the incumbent base of rooftop antenna. This does not apply to all other technologies which can be operated in other bands.

389. Subject to the outcome of international negotiations, ULTV believes it is likely to be in the public interest for this spectrum to be used to deliver a multi-frequency DTT network enhancing the existing intervention to promote this technology in the retained spectrum and enabling DTT viewers to receive a comprehensive selection of FTA, HD and/or pay-TV services.

390. ULTV proposes that a primary user of lower-cleared spectrum for UK-wide DTT applications should be required to make spectrum available on a secondary basis for PMSE and local DTT applications on regulated terms.

391. ULTV draws particular attention to paragraphs 54 to 61 alongside other parts of this submission.

Question 8: Are there any distinctive considerations and uses for this spectrum in the nations and regions of the UK?

392. As set out in this submission, ULTV believes that interleaved spectrum packages should be awarded in a manner which puts the interests of a community first.
393. For the avoidance of doubt, ULTV supports the award of the 600 MHz band on a UK-wide (rather than geographic basis) and, potentially, with universal coverage obligations attached as a licence condition. However, ULTV does expect Ofcom to give further consideration to the interests of socially valuable applications.

Question 9: Do you have any comments on our continued inclusion of channel 36 in the award of the 600 MHz band?

394. ULTV agrees with Ofcom's proposal to include channel 36 in the award of the 600 MHz band.

Question 10: Do you have any comments on our intention to maintain a market-led approach to awarding the 600 MHz band and geographic interleaved spectrum?

395. ULTV anticipates interleaved spectrum could be attractive to speculators who could potentially hoard it for many years. ULTV is also concerned that both interleaved spectrum and the 600MHz band could be attractive to incumbent DTT multiplex operators seeking to restrict supply in order to maintain existing DTT rental yields.
396. ULTV comments further on Ofcom's intention to "maintain a market-led approach" throughout this submission and its joint response (with CMA) to the previous consultation on Ofcom's Draft Annual Plan 2010/11. ULTV draws particular attention to paragraphs 122 to 132 and paragraphs 332 to 362 alongside other parts of this submission.
397. ULTV appeals to Ofcom to ask itself if it wishes to promote a society where local content is only ever available on DTT if producers can afford to acquire capacity from under-regulated monopoly gatekeepers.

Question 11: What information can you provide on packaging and award design considerations?

398. ULTV believes it is time to place communities – not gatekeepers – in control of local multiplexes.
399. ULTV's proposals on packaging and award design are set out throughout this submission. ULTV draws particular attention to paragraphs 75 to 87, paragraphs 105 to 113 and paragraphs 231 to 239 of this submission. ULTV believes the optimal use of lower cleared spectrum is likely to be for DTT (taking account of the existing base of receive antenna) and this should be taken into account in any future award design.

Question 12: When would you like to start operating new services using the 600 MHz band and/or geographic interleaved spectrum?

400. ULTV recognises that local DTT services will not generally be able to launch until interleaved spectrum becomes available following the completion of regional switchover and/or any re-organisation of the digital dividend. However, ULTV wishes to see a new tier of local and community TV stations commence broadcasting as soon as possible. Whilst there may be exceptions, ULTV anticipates that many Community Multiplex operators and service providers would wish to have up to two years following licence award to plan their launch.
401. ULTV believes much further work is required by Ofcom on the 600 MHz band before it will be appropriate to release to the market. However, ULTV believes there is likely to be high demand for this spectrum for DTT services launching as soon as practical. ULTV believes Ofcom should not be persuaded to delay proceeding with awards by incumbent DTT operators seeking to protect their dominant market status from new competition for many more years.
402. Given past experience of Ofcom missing planned timescales by several years, ULTV suggests Ofcom plan to release all of this spectrum as early as possible. It is likely that a UK-wide build of new DTT infrastructure will take time but that at least some services (including potential new DTT services in the 600 MHz band) could be made available to coincide with digital switchover in some regions.
403. ULTV believes that MPs and other stakeholders now deserve a clear and unequivocal statement from Ofcom in favour of reserving interleaved spectrum for local TV. Whilst the detail of a new licensing regime may require further consideration, an early announcement would enable ULTV to re-direct its campaigning and Parliamentary activity and, more importantly, enable local groups to start developing partnerships and business plans.
404. ULTV looks to Ofcom to consult on the details of a Community Multiplex licensing regime in 2010 with a view to commencing an award process in 2011 well before the completion of digital switchover. Where practical, ULTV believes there are significant advantages to viewers and operators in launching new Community Multiplexes to coincide with digital switchover – not least as this renders the further re-tuning of DTT reception equipment unnecessary (a process ULTV expects many citizens to find confusing and challenging).
405. ULTV is excited about the opportunities presented by Community Multiplexes to offer communities the opportunity to access and control spectrum in their own interest. However, ULTV understands that good ‘in group’ frequencies are likely to be limited. Whilst not yet known, potentially as much as half the UK population may not be able to receive a Community Multiplex. The reorganisation of the 600 MHz band may prevent some interleaved spectrum from becoming available for use until 2014 or later.
406. ULTV continues to press Ofcom to cooperate with stakeholders (including MPs and government) to implement a Channel 6 licensing regime to ensure that digital switchover delivers a free-to-air local TV service to virtually all UK citizens in the coming decade.

United for Local Television
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Further information

United for Local Television (ULTV) is an umbrella group representing a broad range of local TV practitioners and advocates.

The views expressed in this submission represent the policy of the ULTV Management Committee and may not reflect the views of any other individuals.

Where possible, links to sources are included within footnotes – all links are accurate as of the date of this submission. ULTV does not endorse the content of third party websites.

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