



UNITED FOR LOCAL TELEVISION
Consultation Response

*“Draft Annual Plan 2008/09”
Ofcom consultation published 11/12/07*

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Section 1 – Introducing options for local TV

DEVELOPING A VIABLE DIGITAL TELEVISION NETWORK SERVING THE NATIONS, REGIONS AND LOCALITIES OF THE UK

- 1.1 United for Local Television congratulates Ofcom upon producing a draft Annual Plan which seeks to drive forward the interests of consumers and citizens in the converging communications landscape. Whilst welcoming much of Ofcom's planned work, United for Local Television notes with concern that the development of local TV receives no reference anywhere in the entire Annual Plan.
- 1.2 Existing regional broadcasting provision is far from adequate. The regional press generally targets areas far more relevant to the every-day life of a typical viewer than existing regional 'opt out' programming on the BBC and ITV1.
- 1.3 UK citizens are amongst the least well served in the entire democratic world for access to local news and information from television. It is vital to the development of democratic engagement that the UK implements a coherent strategy to address this failure. Digital switchover provides this opportunity.
- 1.4 ITV plc executive chairman, Michael Grade, recently reminded policy makers that ITV1 is the only commercial provider of regional programming:

*"Remember: no other commercial broadcaster provides any regional services. In regional news in particular, plurality of provision – an alternative to the BBC – depends on ITV being able to remain in the game."*¹
- 1.5 A number of ideas have been floated for the future funding of national, regional and sub-regional public service content. The case for direct funding is that it enhances transparency and accountability and, if contestable, may be less discriminatory than indirect funding. SMG plc has for some years pressed for 'top-slicing' of the licence fee to help fund Scottish content. For instance, in its contribution to discussion of the BBC's Royal Charter renewal, SMG stated:

"SMG supports the retention of the licence fee as a means to fund PSB through the BBC, but agrees with the proposal that to strengthen and maintain PSB in a multi-channel environment post digital switchover, then part of the licence fee should become contestable funding for PSB.

*"SMG would expect to be able to apply and be granted funds from the PSP, or indeed have the opportunity to run it in Scotland. We are existing broadcasters with audience and reach..."*²
- 1.6 Some broadcasters have expressed concern that the commercial television sector does not become 'addicted' to long-term direct subsidies.³ Channel 4 and others have

¹ Grade, Michael (2007), *speech to Ofcom Nations and Regions Conference 29/06/07*, Cardiff

² SMG plc (June 2005), *A submission from SMG plc in response to:- DCMS Review of the BBC's Royal Charter - a strong BBC, independent of Government*, Glasgow: SMG

suggested that gifted spectrum assignments may remain a valuable and effective mechanism to support public service content for a significant time post-DSO, together with other forms of indirect support.⁴

1.7 United for Local Television suggests that existing intervention has contributed to the dominance of the incumbent PSB operators, especially on DTT, and a range of new policies should be considered to seek to enhance competition and plurality in free-to-air broadcasting provision.

1.8 In recent months, ITV plc has proposed £35m to £40m of annual savings from its regional news budget, almost half its total expenditure on this programming.⁵ Michael Grade has been quoted in the Times as suggesting that, post-DSO, all genre quotas on Channel 3 licences should be removed:

“What’s not needed is any kind of genre prescription regulation that says you have to do this type of programme.”⁶

1.9 United for Local Television believes that policy makers are facing a clear choice:

- (i) allow ITV1 to effectively hold UK citizens and local advertisers to ransom as the monopoly commercial provider of national and regional English language programming on the terrestrial platform, potentially ultimately demanding significant (direct or indirect) support only to sustain existing levels of local content; or
- (ii) adopt policies to enable new entrants to emerge offering significantly enhanced levels of local news, local current affairs and local advertising (together with other content), minimising cost and maximising value to all UK citizens.

1.10 United for Local Television has set out a proposal to Ofcom for “*Channel 6*” as a new sixth universal public service network.⁷ Ofcom have already agreed it would be possible, adopting ‘add/drop’ technology, to use one video stream on an existing DTT multiplex to provide local TV to all UK citizens. The number of regional franchise areas could be anything between 4 (one for each nation) and 80 (one for each major DTT site). United for Local Television proposes a federation of at least 50 regions, each providing new local content every day (although it would be for Ofcom to assess all options further as part of its PSB Review).

1.11 With UK network scale, Channel 6 would be financially viable. The service would be able to combine high quality local TV with networked public service content, in line with successful local TV models throughout the world.

³ For instance, Michael Grade has expressed concerns regarding contestable funding although in the past ITV has expressed some sympathy with the principle of ‘top slicing’: “*ITV supported the idea of competition for licence fee funding and suggested distribution via a “public service fund”, rather than by a stand alone body.*” Source: House of Lords Select Committee on the BBC Charter Review (18/10/05), *First Report*.

⁴ “*While in principle Channel 4 supported a measure of competition for the licence fee, its Chief Executive, Andy Duncan, told us that it would prefer the continuation of indirect, rather than direct subsidy from the Government.*” Source: House of Lords Select Committee on the BBC Charter Review (18/10/05), *First Report*. The Committee itself appeared to endorse the view that indirect subsidy was preferable expressing reservations about contestable funding: *We doubt that the Public Service Publisher will provide a sufficient degree of long term financial security for commercial PSB. We are concerned that it would incur significant transaction, legal and distribution costs with little return to the licence fee payer. Therefore, at this time we do not believe it is possible to support Ofcom’s proposal.*”

⁵ Kiss Jemima (12/09/07), *ITV slashes regional news budget*, <http://www.guardian.co.uk/media/2007/sep/12/ITV.citynews>
London: Guardian

⁶ Sabbagh, Dan (18/09/07), *Michael Grade wants to free ITV from need to meet news quotas*, London: The Times

⁷ United for Local Television (2008), *Consultation Response “The Future of Digital Terrestrial Television Ofcom consultation published 21/11/07*, Sheffield: United for Local Television

- 1.12 It is understandable that Ofcom hopes the market will deliver local TV, with the minimum of regulatory intervention. Unfortunately, the market is almost certain to continue to fail to deliver local TV so long as the main (terrestrial) TV platform remains capacity constrained.
- 1.13 Local TV operators have to recoup their programme production costs within a limited, localised, revenue base. Whilst the local TV business model is proven to be profitable and successful worldwide, local TV operators can expect to be out-bid for broadcasting capacity by 'national' operators in the absence of regulatory protection. That is why Parliament originally put in place the RSL regime. If Ofcom abandons RSL licensing without any new protective measures, existing local TV services will be forced to close. There is a serious danger that what little local TV exists will be destroyed.
- 1.14 Ofcom intends to auction 'interleaved' DDR spectrum assignments at around 25 of the largest DTT transmission sites scattered across the UK. These will be suitable to provide regionally-targeted DTT multiplexes each capable of carrying up to 10 standard definition video streams. There is no serious question these frequencies will generally be amalgamated to form a quasi-UK multiplex.
- 1.15 Ofcom's expectation that local TV operators will bid for spectrum against multiplex operators, without any protection, is akin to expecting David to fight Goliath without a sling. There is no realistic chance any prospective multiplex operators will allow themselves to be out-bid for spectrum by independent local TV service providers. Following auction it is most unlikely that, in the absence of 'must carry' obligations, multiplex operators will enter into long-term carriage arrangements with local TV service providers.
- 1.16 No country, anywhere in the democratic world, argues that local broadcasters should only be able to gain access to capacity if they can out-bid national broadcasters. If the UK were to adopt this policy the entire local commercial radio sector would close down overnight, as would all ITV1 regions. The USA has always imposed 'must carry' obligations on cable platform operators. The fundamental question for policy makers is not whether to intervene to safeguard local broadcasting but, rather, what form this intervention should take.
- 1.17 Ofcom has proposed direct funding of £50m to £100m per annum for a new web-based 'public service publisher' based in the UK's nations and regions.⁸ This would cost the tax payer up to £1.5bn over 15 years. Despite the significant costs involved in Ofcom's proposal, it offers few clear benefits, especially to the most vulnerable in society. **Government statistics show that around 35 per cent of all adults have never used the Internet. This figure rises to 82 per cent of all adults aged over 65.**⁹
- 1.18 A 'sixth' universal TV network, whilst much more modest in terms of cost than Ofcom's public service publisher, would immensely enhance the provision of local and regional news and information for all UK citizens.
- 1.19 Ed Richards eloquently warned of the dangers of subsidising public service content on platforms such as the Internet when he said:

"...we must always recognise that the case for public funding of public service broadcasting relies on the programmes meeting public service

⁸ Ofcom (2007), *A new approach to public service content in the digital media age – The potential role of the Public Service Publisher*, London: Ofcom. It should be noted Ofcom has argued this cost is only a fraction of the indirect subsidy historically provided to analogue PSB operators.

⁹ National Statistics (August 2006), *First Release – Internet Access, Households and Individuals* (Coverage: United Kingdom, Theme: Social & Welfare), London: National Statistics

*purposes and that they are watched by sufficient numbers of people to justify the expenditure...*¹⁰

1.20 As an alternative to the Internet, Ofcom has suggested that public bodies might subsidise local TV operators' acquisition of DTT multiplex capacity in the market. This proposal is perverse. Instead of the price paid for multiplex capacity representing opportunity cost (i.e. the next highest value use), a local TV provider would be required to pay a spectacular premium, in order to 'prise' capacity from an incumbent holder. Any windfall gain arising from the state's decision to 'buy back' DTT multiplex capacity previously gifted by Ofcom would not represent an efficient use of public funds.

1.21 Ofcom has long acknowledged that the market for DTT multiplex capacity may be ineffective. According to Ofcom:

*"...the rate at which capacity has been made available has been lumpy... Respondents who disagreed with our analysis of this market did not, in our opinion, introduce compelling evidence that...markets are operating efficiently."*¹¹

1.22 Before Ofcom was formed, back in 2002, former BBC Director-General Greg Dyke set out the three audiences he suggested were under-served by the BBC:

"First, we under-serve the young...."

"Secondly, many of our services are still seen as skewed towards the South of England..."

*"But this morning I want to talk mainly about the third audience group we under-serve. Ethnic minorities in the United Kingdom disproportionately don't use our services. Our research shows they don't think we're for them."*¹²

1.23 A credible option for Ofcom and Government must be to ensure new public service networks are able to supply content under-served by existing PSB operators. Ofcom's PSB Review should not just be questioning how to maintain the status quo, for the benefit of the "hideously white" broadcasting establishment, but also the potential benefits of enabling new public service entrants to gain access to DTT, increasing the plurality of broadcasting voices throughout the UK.

1.24 There is a serious danger of the UK sleepwalking into the worst of all worlds – allowing the BBC to destroy the commercial market for digital local media content before it becomes viable. The BBC proposes to launch new 'ultra local' broadband websites, cross-promoted on all traditional BBC platforms. A recent editorial in Aerial stated:

*"Local matters to people more than regional...BBC Local broadband...divides the UK into 60 areas...(but the)...local newspaper lobby is trying to drum up opposition in order to protect its own web ambitions...In digital Britain the public will expect a better deal than they get from regional broadcasting that often defies natural cultural boundaries."*¹³

¹⁰ Giles, Chris and Richards, Ed (2004), *Commentary: The future of public service broadcasting and the BBC* in Public Service Broadcasting without the BBC?, London: The Institute of Economic Affairs

¹¹ Ofcom (2006), *Future pricing of spectrum used for terrestrial broadcasting – statement*, London: Ofcom

¹² Reference to "hideously white" repeated in speech by former BBC Director-General, Dyke, Greg (03/0502), *Diversity in broadcasting – a public service perspective* given at the Commonwealth Broadcasting Association Conference in Manchester, London: BBC press office

¹³ Aerial (05/02/08), London: BBC

- 1.25 It would be ironic if Ofcom were to be forced to conduct a Market Impact Assessment on the BBC Local proposals, prompted by the BBC Trust, but refused to consider how local TV could be financially viable across the UK, accessing DTT capacity.
- 1.26 The BBC's existing share of UK television news audience is already around double that of ITV and BSkyB combined. If the BBC were to start to offer local TV news this would be certain to have a severe negative impact on the plurality of broadcasting voices available in the UK, depriving local businesses of the ability to reach a mass audience by advertising around local TV content provided by the independent sector.
- 1.27 Broadband TV is still a very young and embryonic market but a number of commercial, community and municipal operators are starting to experiment in using this platform for the delivery of local content.
- 1.28 In September 2007, Kent County Council launched KENT TV as a broadband service, to help assess the demand for local TV. The Council agreed to invest £1.4 million over two years, and, after a tender process, invited Ten Alps to launch and produce the service. There are now more than 500 films online providing more than seven hours of viewing for a local, national and international audience. In addition to a small in-house team of 4 video journalists, films have either been acquired from local businesses and community groups or commissioned from a dozen Kent independent TV companies. As of 14 February 2008 KENT TV had received 120,839 unique visits since launch.¹⁴
- 1.29 There is considerable interest from local authorities in working with the private sector to use local TV to promote local public services to a mass local audience on DTT. Any assignment of DTT multiplex capacity by the regulator to non-PSB services which deprives universal access to local TV will only lead to widespread disappointment amongst civic bodies throughout the UK.
- 1.30 Ofcom has spent more than two years considering how to release the 30 per cent of analogue broadcasting spectrum that is to be freed up by DSO (the so-called "*digital dividend*"). It is most disappointing that Ofcom appears unwilling to spend more than about two months consulting on how to maximise value to society from the 70 per cent of spectrum that is to be retained for DTT.
- 1.31 The current under-supply of public service content in many genres (such as children's, arts and religion) represents a serious failure by Ofcom to achieve its core statutory duties. If Ofcom were willing to open up DTT multiplex capacity to new entrants a diversity of public service genres could be supplied by the market, without a requirement for significant direct public funding.
- 1.32 A major objective of United for Local Television is to persuade Ofcom to act reasonably and to consider the case for allowing new entrants to access universal DTT multiplex capacity as part of its PSB Review. Ofcom must not allow itself to be pressurised by powerful broadcasting interests into making any decisions on the use of DTT multiplex capacity without, firstly, engaging the whole of the UK in a debate about the best use of this valuable spectrum.
- 1.33 Ofcom should undertake comprehensive research to consider to what extent consumers and citizens demand truly original content from new service providers on DTT. This research should question whether consumers and citizens would value new SD channels as well as channels focused on repeats, time-shifts, spin-offs and 'red button' services from the incumbent PSB operators.

¹⁴ Information supplied by Peter Williams Television, a consultant to KENT TV and member of United for Local Television

- 1.34 United for Local Television emphasises the importance of work to examine policy options to introduce competition in the market for regional and sub-regional TV advertising, currently monopolised by ITV1.
- 1.35 Ofcom, in effect, reversed its entire policy position towards PMSE following proper consultation. It is equally important Ofcom now conduct proper consultation on the future of local TV.
- 1.36 This consultation response primarily makes recommendations for further work outside of the ongoing DDR project. United for Local Television wrote to Ofcom separately, on 14 February 2008, setting out its views on work that is important during the final phase of the DDR.
- 1.37 A summary of the main public policy options proposed for further consideration by United for Local Television is set out in Annex 2.
- 1.38 Ofcom notes that:

“It’s interesting how many big changes and new ideas in broadcasting and PSB have come from newcomers shaking up the market.”¹⁵

- 1.39 Ofcom has, so far, been unwilling to even consider the merits of enabling new public service entrants to gain access to universal DTT multiplex capacity. Section 2 sets out three areas United for Local Television suggests Ofcom should prioritise for further work in the coming year.

¹⁵ Ofcom (28/09/04), *Ofcom review of public service television broadcasting Phase 2 - Meeting the digital challenge*, London: Ofcom

Section 2 – Comments on draft Annual Plan 2008 / 09

OFCOM NEEDS TO CONSIDER ALL POLICY OPTIONS FOR THE DEVELOPMENT OF LOCAL TV

- 2.1 United for Local Television welcomes Ofcom's draft Annual Plan but is concerned that it may not enable a holistic policy towards local TV to emerge from the diverging PSB, DDT and DDR projects.
- 2.2 As an 'umbrella group' for organisations with particular interest in local content and PSB, United for Local Television suggests three specific areas it believes Ofcom should undertake further work in the coming year.

Annual Plan proposal 1 – Consult further on the future of DTT following the PSB Review

- 2.1 United for Local Television has responded separately to Ofcom's consultation on "*The Future of Digital Terrestrial Television*." The views expressed below relate to Ofcom's Annual Plan – and why it is proposed Ofcom consult much further on the future of DTT following the conclusion of the PSB Review.
- 2.2 Ofcom has offered no SWOT analysis (strengths, weaknesses, opportunities and threats) in relation to an early adoption of DVB-T2 ("T2"). Whilst it is never easy to argue against spectral efficiency, the devil is always in the detail and the detail of T2 cannot be consulted upon at least until version 1 of the new standard has been finalised and placed in the public domain.
- 2.3 By far the most spectrally efficient action would be a move towards single frequency networks ("SFNs"). To benefit from HD, a viewer is required to (i) replace their television set and (ii) replace their STB/PVR. Relative to these costs a new aerial appears a modest investment offering potentially enormous benefits to the citizen-consumer. United for Local Television's DTT consultation response suggested consideration be given to moving towards SFNs as part of a more comprehensive analysis of the options available for the future of this platform.¹⁶
- 2.4 United for Local Television believes Ofcom's DTT consultation needs to be re-opened following the conclusion of the PSB Review by which time more should be known about the T2 standard and other relevant plans for the advancement of DTT, such as MIMO.
- 2.5 Post-DSO, a large proportion of the population will rely on DTT as their main source of television. A significant proportion of these citizens will only receive the three universal (the so-called "PSB") multiplexes. Ofcom proposes to allow these multiplexes to be monopolised by the same broadcasters who previously monopolised all analogue spectrum. Ofcom's proposal would deny the benefit of any additional plurality of voice, instead allowing the incumbent PSB operators to use one entire multiplex to provide low bit-rate HD. Ofcom has produced no evidence that those citizens who only receive the 3 universal multiplexes would prefer to receive 3 sub-standard HD services rather than up to 10 new SD services. In the absence of such evidence, Ofcom's proposal appears to require further research and consultation.

¹⁶ A move towards SFNs could have a minor impact on interleaved spectrum uses, dependent on how many frequency channels in the retained spectrum were to be used as SFNs.

2.6 Today, a household whose main TV relies on any of the 1072 terrestrial transmitter sites which are analogue only (not DTT) still only receives five channels. Ofcom's DDR research suggests it is these 'late' converters who are generally the least likely to demand HD, and the most likely to demand enhanced SD plurality and local TV.

2.7 In its report to the BBC Trust, Sagentia suggested it could be most economically efficient for HD to broadcast on satellite:

*"If portable were not to require HD, then one scenario would be for HDTV to be provided by satellite for fixed sets and SD to be provided by DTT for portable sets. This would be a rational and economically efficient partitioning of spectrum."*¹⁷

2.8 Ed Richards set out the case against Ofcom and Government allocating spectrum to new technologies such as T2 and HD when he said:

"...uncertainty..is inherent in fast-moving markets – where changes in technology and consumer preferences cannot be reliably foretold. The implication of this point is simple but profound – we, as a regulator, simply cannot know the best uses...over the next couple of decades."

*"The same is true of high definition television...consumers may come to expect universal access to public service broadcasting in HD, just as they do now in colour. But the evidence for reaching a verdict on that claim now is lacking – most research suggests that HD is seen as a premium consumer product, rather than a significant source of value to society as a whole."*¹⁸

2.9 Intervention to enable HD on DTT is only justified if a very high threshold is passed. To date, Ofcom has failed to set any threshold – let alone prove it has been passed.¹⁹

2.10 It is inappropriate for Ofcom, as the competition regulator for the communications sector, to itself act in any manner that is anti-competitive. Below, United for Local Television proposes that Ofcom consult further on the merits of allowing new public service television operators to enter the DTT platform as part of a more comprehensive review of the future of DTT.

Annual Plan proposal 2 – Consider the case for new public service networks on DTT as part of the PSB Review

2.11 Ofcom is aware it cannot rely upon the BBC's continued provision of high-profile and high-quality regional/national programming should ITV1 further move away from this content.

2.12 Already, in the children's genre, BBC1 has effectively abandoned 11 to 15 year-olds, and has axed its two main after-school dramas targeting this age group (Byker Grove and Grange Hill). The time slot traditionally used to schedule these UK originated drama series for older children has now been filled with the adult quiz show, The Weakest Link.

2.13 Despite a plethora of dedicated children's channels on digital satellite and cable, only children's channels from the PSB operators are available on DTT. This lack of access to

¹⁷ Sagentia (August 2007), *Advice on spectrum usage, HDTV and MPEG-4*, London: Sagentia

¹⁸ Currie, David & Richards, Ed (2006), *Foreword* in Digital Dividend Review (consultation) – This document consults on the proposed approach to the award of the digital dividend spectrum (470-862MHz), London: Ofcom

¹⁹ "According to the Imaging Science Foundation... the most important aspect of picture quality is contrast ratio, the second most important is color saturation, and the third is color accuracy. Resolution comes in a distant fourth.." Source: CNET HDTV Word (2008), cnetworks.com, California: CNET Networks

DTT limits the ability of the satellite and cable children's channels to invest in new original UK content.²⁰

- 2.14 CITV is no longer available in Wales, leaving the BBC as a monopoly provider of dedicated UK-wide children's channels on DTT. Neither of the BBC's two dedicated children's channels caters for young teenagers. However satisfied many parents may be with overall provision of children's content (particularly for younger children on satellite and cable), there is no provider of original UK content for older children offering significant competition to CBBC on DTT.²¹
- 2.15 There are many types of 'market failure' but, in general, there are two main approaches to seek to remedy market failure and maximise the efficiency of market outcomes:
- (i) the so-called "*interventionist*" approach is to intervene in the market, for instance with direct subsidies or regulation;
 - (ii) the so-called "*market-led*" approach is to adopt market mechanisms to seek to address the cause of an inefficient outcome, for instance a lack of effective competition or open markets.
- 2.16 In television, a mixture of approaches has been pursued in recent years, including direct funding (the BBC), positive content regulation (the PSBs) and enhanced competition (cable/satellite/broadband). However, it is concerning that Ofcom appears to lack commitment to promote effective competition in the 70 per cent of spectrum that is to be retained for DTT.²²
- 2.17 Access to DTT is critical to the success of new free-to-air (FTA) services. The ability of FTA broadcasters to maintain investment in original UK production depends on their audience share and related advertising income. It is reasonable to assume the terrestrial platform will remain critical to the success of FTA services for the foreseeable future.
- 2.18 DTT is currently dominated by incumbent PSB operators whose interest is to control the platform to protect their market share. This leads to a lack of effective competition and contributes to the under-supply of public service content such as children's, current affairs, arts, cultural and religious programming.
- 2.19 To date, the DSO process has not reduced barriers of entry to the point where new entrants are able to challenge the supremacy of incumbent operators. With the exception of premium (subscription) content, the striking feature of digital households is the continued dominance of the analogue incumbent operators. The market share of the incumbent PSB operators and their sister channels in DTT-only households is around 90 per cent.²³ There is a prima facie case this dominance reflects market power and a need for the regulator to intervene in order to actively promote competition.

²⁰ Channel 4 previously moved E4 (May 2005) and Film4 (July 2006) from pay-TV to FTA and it is likely other broadcasters would be tempted to do the same if DTT capacity was available to them on reasonable terms.

²¹ Ofcom's research shows parents of younger children are generally more satisfied with children's content on the PSB channels than parents of older children. For example: "...programmes help my children learn and develop...Parents with children aged 2-9 were more likely than parents with children aged 10-15 to think that the PSB channels overall delivered on this statement (49% to 38% respectively)." Source: Ofcom (March 2007), *Public Service Broadcasting: Annual Report 2007*, London: Ofcom

²² In its 2007/8 Annual Plan Ofcom committed to complete its review of "**wholesale digital TV platforms**" and "**the rules which promote fair and effective competition in relation to terrestrial multiplexes**". This year these two reviews would appear to be on permanent hold. If still not considered priorities for 2008/09, United for Local Television proposes Ofcom commits to a timescale for the completion of these two reviews in the near future. It is highly questionable whether Ofcom should be determining competition-related conditions for any DDR spectrum unless and until these two reviews are completed.

²³ BARB, June 2007

- 2.20 As demonstrated, incumbent PSB operators already dominate the DTT platform. The integration of 'Kangaroo' into *Freeview* and *Freesat* STBs is a potentially dangerous new development that could further strengthen the market power of the most dominant FTA operators.
- 2.21 In relation to digital television, Ofcom's draft Annual Plan focuses on ongoing work to promote competition in pay-TV but fails to give any priority to the promotion of competition in FTA-TV. It is vital that Ofcom's second PSB Review considers how the market dominance of the PSB operators could be broken up, in the interests of citizens and consumers. Whilst the PSB Review is required to consider the role and status of the designated PSBs, this must not be interpreted as purely addressing their narrow interests, rather than the wider citizens' interest.
- 2.22 It should be of serious concern to Ofcom that the market for FTA services on DTT would appear to be defective. FTA services make a far greater contribution to the purposes and characteristics of PSB than pay-TV. It is only by enhancing the plurality of FTA services that it is possible to enhance the diversity of agendas, opinions, perspectives, emphasis and priorities in the provision of information, news and current affairs on a universal basis. Where the only effective competition to the incumbent FTA services comes from their own 'sister' services there is an obvious risk to diversity and plurality of voice.
- 2.23 The DDR process may enhance the supply of multiplex capacity to the market, although it is too early to say how much of the released spectrum used for DVB-T will be 'in-group' with existing aeriels, or serve households outside of the handful of large DTT transmitter sites which offer dense population coverage. It remains plausible that any new DVB-T multiplexes will be dominated by shopping or subscription services with little incentive to offer new FTA SD public services.
- 2.24 The Competition Commission has acknowledged concerns about the lack of an effective functioning market for DTT multiplex capacity, stating:²⁴

"...ITV controls a significant portion of DTT capacity. Access to this platform is regulated, although some concern has been expressed to us as to whether current regulation sufficiently enables competition and non-discriminatory access to capacity.... there appears to be little spare capacity to be made available over the next few years.....In summary, our view is that there are relatively low barriers to entry for a television channel provider aiming to reach a small number of subscribers. However, it would be much more difficult for a new channel to acquire or develop quality content and reach large audiences by providing FTA services."

- 2.25 The Competition Commission notes that just three providers – the BBC, ITN and Sky News – together account for at least 97.5 per cent of total television news viewing. The Commission further comments that:

"We consider that for the time being and for the foreseeable future, online sources of news are more likely to complement than to replace television and other traditional news platforms. We also note that online news is still largely provided by existing media players."²⁵

²⁴ Competition Commission (2007), *Acquisition by British Sky Broadcasting plc of 17.9 per cent of the shares in ITV plc – Report sent to Secretary of State (BERR)*, London: Competition Commission

²⁵ "Ofcom said that its research had shown that Internet news was primarily a complement to, not a substitute for, broadcast television news which was regarded in 2006 by 65 per cent of people as their primary news source. It had found the Internet to be used by people as a supplementary rather than a main source of news. The impact of the Internet was in any event constrained by the fact that many of the Internet sources of news were from established media

- 2.26 ITV plc acknowledges that its services are far more dominant on DTT than other digital TV platforms:

“it is...very clearly and directly in ITV’s commercial interest for the DTT platform to maintain its growth and achieve “default” status as a result of switchover. This is because ITV’s channels achieve significantly higher viewing shares on free-to-air platforms – particularly DTT...”²⁶

- 2.27 Convergence of communications is not a credible justification for Ofcom abandoning its duty to promote universal PSB. Ofcom has a statutory duty to review PSB at least once every five years. Whilst it would be right for Ofcom to consider the future of all digital TV platforms as part of its PSB Review, it would be wrong for Ofcom to focus any proposed intervention on broadband platforms at the current time.
- 2.28 There is surprisingly wide consensus that traditional TV will continue to dominate broadcasting viewing and revenues. Screen Digest forecasts that the traditional TV advertising market will be worth £3.839bn in 2012. In contrast, all revenues associated with open Internet TV services (advertising, subscription and pay-per-view) are forecast at just £200m.²⁷
- 2.29 ZenithOptimedia forecast IPTV growth from 0.2 per cent household penetration in 2006 to 1.6 per cent in 2012.²⁸ However inaccurate this forecast, IPTV is nowhere near becoming universally available, free at the point of use. Around a third of all adults have still **never used** the Internet. There is little evidence these late adopters are all about to be rapidly converted in the run up to DSO.
- 2.30 It is important the PSB Review is able to consider all tools to encourage the development of new public service content post-2008, both interventionist and market-led, including the assignment of existing Freeview capacity to new entrants. That is why it is essential that no DTT multiplex capacity is re-assigned by Ofcom at least until the PSB Review has concluded.

Annual Plan proposal 3 – Consider all options for the future of local TV as part of a comprehensive review of the sector

- 2.31 United for Local Television believes the draft Annual Plan fails to put sufficient weight on ensuring that a proportion of retained spectrum is used to promote the interests of citizens, guaranteeing provision of under-served content such as local news and current affairs.
- 2.32 There are a wide range of possible policy options for the development of local TV ranging from intervention in the assignment of DTT capacity to securing priority on the EPG, ‘must carry’ status on cable platforms to forms of direct funding. It is important that each of these policy options is considered as part of a comprehensive review of the local TV sector, rather than simply in isolation. A number of these options were raised in Ofcom’s 2006 discussion document, *Digital Local*.²⁹ Unfortunately, this was not a formal consultation document and included no questions for public consultation.

providers.” Source: Competition Commission (2007), *Summary of evidence provided by Ofcom at hearings on 26 June 2007 and 18 July 2007*, London: Competition Commission

²⁶ Freshfields Bruckhaus Deringer (18/06/07), *ITV plc Statement of case on competition issues (non-confidential version)*, London: Freshfields Bruckhaus Deringer (main party submission to Competition Commission on behalf of ITV plc)

²⁷ Source: Sweeney, Mark (14/01/08), *Show me the money* in *The Guardian* Joined-up media supplement, London: Guardian

²⁸ ZenithOptimedia (2007), *UK Television Forecasts to 2012*, London: ZenithOptimedia

²⁹ Ofcom (2006), *Digital local: Options for the future of local video content and interactive services*, London: Ofcom

- 2.33 Since its formation four years ago, Ofcom has not conducted a single consultation on the future of local TV. Existing RSLs face the threat of closure and are one of the only services licensed by Ofcom never to have been the subject of a single dedicated consultation. In contrast, there have been a large number of consultations on the future of local radio and community radio. This has contributed to the anomalous situation where Ofcom is licensing DAB local radio multiplexes and intervening to support local content on analogue radio, but at the same time recklessly withdrawing the RSL licensing scheme for local TV.
- 2.34 There is a strong danger the DSO process will lead to the contraction of local TV, rather than the expansion hoped for by Government and Ofcom.
- 2.35 United for Local Television appreciates the verbal assurances from Ofcom that policy options for local TV will be considered as part of the second PSB Review.³⁰ However, it is notable that similar assurances were received in relation to the first PSB Review. This did not lead to any significant policy development to enhance local and regional programming in the English language (the main result of the review being the reduction of ITV1's region/nation programming commitments).³¹
- 2.36 It is extremely concerning that local TV is not even mentioned within the draft Annual Plan itself. In light of the demand for local TV shown in Ofcom's DDR research, it is important Ofcom conduct a full comprehensive consultation on the future of local TV.
- 2.37 Ofcom's approach to the issues raised by convergence display little evidence of 'joined up' thinking. For instance, it is understood that the "Future of DTT" is an entirely separate project to the PSB Review, with no common personnel. It is currently intended that the "Future of DTT" policy statement will be issued in the next two months, before the PSB Review consultation even commences.
- 2.38 Former ITN Chief Executive, Professor Stewart Purvis, now an Ofcom partner, is quoted as telling the Competition Commission that news programmes tend to develop agendas to reflect different priorities. The Competition Commission states:

*"Professor Purvis believed that agenda-setting was key to impartiality within the five public service broadcasters. The BBC report on impartiality admitted for the first time that the BBC had its own agenda. Professor Purvis had run an ITV News at Ten which had a broadly right of centre agenda, and Channel 4 News which had a broadly left of centre agenda."*³²

- 2.39 There is a wide consensus that media plurality is important to a healthy and informed democratic society. If Ofcom believes intervention to promote plurality and competition is no longer necessary, it should set out its justification for this stance in light of its statutory duties. If Ofcom believes there may be a case for public policy to seek to further enhance the diversity of broadcasting voices, a priority should be to engage the UK's nations and regions in dialogue about the future of PSB. One credible option must be the development of a 'sixth' public service network on a universal multiplex, using add/drop to cater for the widespread public demand for local news and current affairs.

³⁰ A number of members of United for Local Television formally responded to Ofcom's consultation on the Terms of Reference for the PSB Review (September 2007) although the group itself was not formed until December 2007

³¹ Ofcom (09|06|05), *Ofcom publishes statements on programming for the Nations and Regions and ITV Networking Arrangements*, London: Ofcom. It is notable Ofcom concluded that the needs of indigenous language speakers in the Nations would be most effectively met through "dedicated digital channels". United for Local Television suggests dedicated digital channels are also the most effective means of meeting the demand for local TV.

³² Competition Commission (2007), *Summary of hearing on plurality with media experts 11 July 2007*, BSkyB / ITV Third Party Hearing Summaries, London: Competition Commission

2.40 United for Local Television is grateful to Ofcom for the opportunity to contribute these comments on its priorities for 2008 / 09. It is hoped it will be possible to maintain further constructive dialogue throughout the PSB Review and DDR projects.

2.41 United for Local Television wishes all staff at Ofcom a happy and healthy year.

United for Local Television
19 February 2008

We Believe

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

Further information

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Annex 1

ABOUT UNITED FOR LOCAL TELEVISION

UNITED FOR LOCAL TELEVISION

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

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

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

CURRENT MEMBERSHIP

Local Television / Restricted Service Licence (RSL) holders:

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

Community and Local TV Operators and Campaigners:

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

Public Voice Coalition Members:

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

Annex 2

Local TV and PSB – Summary of main policy options for Ofcom to consider in PSB Review & final phase of DDR

Proposed intervention	Status quo intervention	United for Local Television comment
Reserve video & data stream for Channel 6 on universal multiplex to enable 98.5 per cent of UK population to receive a local TV service on 'Freeview'. Potential to also broadcast Teachers TV, Community TV and/or other direct funded 'public service publisher' content that cannot be expected to 'out-bid' pure commercial providers for capacity.	Gift 100 per cent of the English language services on universal multiplexes to London-network based incumbents thereby denying opportunity for new services based in the nations and regions. There is no functioning market for universal multiplex capacity so intervention shuts-out any new competition. No local TV channel on universal multiplexes – despite high audience demand.	Channel 6 would be a radical new public service network based in the nations and regions with local content licence conditions set following research and consultation. 98.5 per cent of citizens would be guaranteed to have their own local TV service with local news, local production and local advertising. This would start to bring UK in line with provision in the rest of the democratic world and enhance fairness of current intervention which assigns all universal multiplex capacity (for English language services) to the same broadcasters who previously monopolised analogue TV spectrum. Viability assured by using add/drop at major DTT stations.
Use capacity already funded by licence fee on a BBC multiplex to enable Channel 6 to launch and enhance public service plurality and choice.	BBC uses capacity for little-valued 'red button services' denying opportunity for new entrants on universal multiplexes (even so would still leave capacity for 2 or 3 'red button services' from BBC)	The licence fee and the gifting of universal capacity to the BBC represents a significant intervention in the market in favour of state provision of broadcast services. The use of BBC-operated capacity already paid-for by the licence fee requires no new use of public funds but allows a new entrant to the DTT platform to meet public purposes.
Give Channel 6 priority in EPG. Encourages competition by giving equal status to new entrant as incumbent PSBs (near start of EPG). Makes it easy for viewers to find new channel genre – wherever you are in UK "Channel 6" is the local channel.	Non-PSB channel (ITV2) benefits from Channel 6 position on DTT EPG. Entrenches existing dominant status of incumbents.	Existing PSB services have the benefit of 'heritage' status built up over many years and the ability to cross-promote digital channels on their main channels. Intervening to award Channel 6 priority status on the EPG would have a material positive impact on a new network and only a minor impact on the non-PSB channel currently gifted this privileged EPG position.
Award Channel 6 'must carry' status on local cable franchises. Enhances viability of services and encourages plurality of views available.	Cable franchises under no obligation to carry local programming. Risks denying opportunity for public to benefit from new service.	Guaranteed cable carriage alongside DTT would ensure the vast majority of UK homes have access to a local Channel 6 service. Would be in line with commitments to local programming generally made by the original cable franchisees.
Reserve 'in group' interleaved frequencies at 1,152 DTT stations for small-scale local TV operators to use for 'RSL' type broadcasts. RSLs have always shared interleaved spectrum with PMSE and there is no reason to end this arrangement.	Allow spectrum to remain fallow as Band Manager may have no financial incentive to release capacity for RSLs or the expertise to conduct a comparative selection process where there are competing small-scale groups.	Residents associations, public bodies, voluntary groups and commercial organisations able to use spare frequencies to provide small-scale local TV services at 1,152 DTT sites. If spectrum is not released to market via RSL-type process high risk it will not be used at all.

<p>A modest Local TV Fund supported by licence fee to promote small-scale broadcasting and creativity.</p>	<p>Licence fee monopolised by BBC. Loss of new creative opportunities across UK.</p>	<p>A modest Local TV Fund could help a new sector of community broadcasting to flourish in all parts of the UK with no material impact on core BBC public services.</p>
<p>Impose competition conditions on any group who wishes to use interleaved or cleared spectrum for DVB-T including: (i) limiting the proportion of capacity that can be controlled by any one broadcaster or network provider; (ii) requiring a diversity of editorial programme services be provided and (iii) require one video stream is assigned to a local TV operator in the interleaved spectrum wherever this is used for DVB-T. Ensure multiplex operators act in a manner that is fair and non-discriminatory. Also consider 'importing' interoperability and ownership restrictions from BA96 into stand-alone 'WTA' regime. Conditions to apply where spectrum acquired at auction and used for DVB-T.</p>	<p>Allow a small number of programme and/or transmission providers to dominate the DTT platform, distorting the market for multiplex capacity and restricting competition.</p>	<p>Appropriate licence conditions would help ensure Ofcom fulfil its statutory duties in relation to broadcasting. Would also prevent a small number of network providers or vertically integrated broadcasters from controlling all capacity prohibiting price competition. Would be compatible with an application and technology neutral auction since conditions would only apply if a bidder chose to implement the assignment for DTT – not any other uses of the spectrum. Comparable to Ofcom's decision to impose positive content conditions on local and national DAB radio multiplexes which Ofcom has elected to award under the terms of the BA96 rather than WTA alone (Ofcom also relies on its general duties to impose additional diversity requirements on national DAB multiplexes beyond those set out in the BA96 award criteria).</p>
<p>Regulate access to DTT transmission masts to ensure interleaved and cleared spectrum assignments have a value to DTT bidders. Ensure access to masts is built into the auction process.</p>	<p>Allow existing DTT site owners to prohibit new entrants from accessing DTT masts, effectively rendering interleaved or cleared assignments intended for DTT unusable. Allow existing DTT site owners to exploit their monopoly status, charging obscene premiums to rivals who acquire spectrum for DTT purposes.</p>	<p>Existing DTT multiplex owners benefit from the DTT platform being capacity constrained as this allows them to charge premium rates to service providers. A new entrant under the control of a rival might reduce the rates that could be charged for existing multiplex capacity. To prevent a rival from launching, DTT multiplex owners may not allow them to access existing DTT sites or, alternatively, could dictate outrageous terms for site access, exploiting their monopoly status. The true value of interleaved or cleared assignments in any auction process will be severely depressed if DTT site owners are not regulated. In practice there will be few bidders, denying the benefit of any meaningful auction process.</p>
<p>Adopt an active competition policy to encourage new entrants to the DTT platform. Ensure capacity is reserved for new public service content providers and establish a public service publisher to fund original innovative programme-making.</p>	<p>Allow incumbent PSB operators to effectively hold Ofcom to ransom over the future of public service content.</p>	<p>New public funding for public service content would not represent an efficient use of public resources unless there is also reserved access to multiplex capacity. Without any reserved access to DTT, the main beneficiary of direct funding would be multiplex operators, not programme makers. Public funds would be diverted from the tax payer to network operators in order to 'buy back' capacity at a spectacular premium to the true 'opportunity cost' value paid at auction or through AIP.</p>