

20 February 2007

## *Ofcom's Draft Annual Plan 2007- 8* A Response by Voice of the Listener & Viewer (VLV)

1. Voice of the Listener & Viewer (VLV) welcomes the opportunity to respond to Ofcom's consultation on the Draft Annual Plan 2007/8.
2. VLV concurs with Ofcom's analysis that this is a period of considerable change as the communications sector undergoes increasing convergence of platforms, contents and services, and VLV welcomes the emphasis that Ofcom gives to the potentially positive consequences for consumers – of increased choice, control and flexibility. However, VLV also has some concerns about how these consequences are framed. We have not, therefore, set out our response in reply to the specific questions set out in Annex 4 of the consultation document but concentrated on some of the key deficiencies we see in Ofcom's general approach to its work and priorities in the coming year. We shall pick up some other concerns, including those outlined in Section 6, for example on Ofcom's market-based approach spectrum, in subsequent responses such as that on the Digital Dividend Review.

### **Citizens' Interests**

3. As an organisation that speaks for citizens, VLV notes with concern the prominence given to consumers over citizens throughout the consultation document. The Foreword to the Draft Annual Plan describes benefits for consumers, but disruption and challenges for public outcomes in the communications sector for citizens. Where it seems to promise benefits to consumers and citizens (para 1.9), it is assumed that these benefits will be provided by markets, an assumption VLV would contest. Ofcom describes its role as limited to influencing the speed of convergence and how widely the benefits are enjoyed, avoiding its responsibilities regarding the nature and quality of these benefits, and so reducing citizen interests simply to those of digital inclusion. VLV concurs that the interests of citizens and consumers will be substantially served by regulating for convergence but not that the interests of citizens will be wholly met in this way.
4. What is missing is an independent analysis of the nature and importance of citizens' interests against which the proposed regulatory strategies can be evaluated. VLV asks whether Ofcom has an analysis of whether some citizen interests cannot be furthered by promoting competition and innovation in converging markets, or whether Ofcom has undertaken a risk assessment of whether promoting competition and innovation may undermine certain citizen interests?
5. It is a particular concern that the same point was made in response to the draft annual plan for 2006-7. It is now over three years since the passing of the Communications Act, and there is still no clear statement from Ofcom regarding the nature of citizens' interests. This is an extraordinary absence, in terms of both the substantive delivery of institutional objectives and in terms of processes of institutional accountability.
6. The list of policy priorities in Figure 2.1 (p.5) makes no mention of the citizen whatsoever, despite Ofcom's primary duty, as specified in Clause 3 of the Communications Act 2003, being 'to further the interests of citizens'. Nor are citizens included under the section, 'Delivering services to stakeholders' (p.9). This is a serious concern, for ultimately citizens are the key stakeholder.
7. Citizens make a rare appearance in the consultation document in relation to including input from citizens in Ofcom's decision making processes (para 3.9). However, the question of what citizens interests are is specifically passed over to Parliament or some unspecified other process of

democratic authorisation. VLV challenges this, arguing that Ofcom has a responsibility to specify the nature of citizens' interests just as it does consumers' interests.

8. Listening to citizens is valuable and necessary, but it is insufficient as a strategy for ensuring that Ofcom delivers on its statutory duty to further citizens' interests. It is also not possible, on the information provided, to evaluate how well or poorly Ofcom achieves this duty. Para 3.11 promises a plan to work with Government to specify the citizens' interests, but provides no information as to how this will be effected or evaluated.
9. VLV is pleased to note, however, that under para 4.29 Ofcom proposes to review 'the key public outcomes that society will want in the future' and we look forward to the outcome of this review in the coming year.

### **Content regulation**

10. VLV notes with surprise that the draft annual plan makes no mention of the Content Board. It is not possible, therefore, to discern the proposed agenda of actions for the Content Board during 2007-8.
11. VLV is concerned at an apparent confusion between perceived and actual risks regarding media and communications content. For example, in para 1.8, Ofcom promises to address parents' worry about protecting their children in the online world, and people's fear of being excluded from the digital environment. VLV asserts that the issue at stake here is not people's worries and fears, simply, but rather whether children are, in practice, unprotected or whether people are, in reality, excluded. Similarly, on p.34 Ofcom proposes to address the concerns of parents who want to protect their children; while not wishing to criticise parents, VLV remains very concerned for those children whose parents do not spontaneously express this concern or avail themselves of opportunities provide by Ofcom – these children are also citizens with a right to be protected from communication-related harms.
12. The Draft Plan contains a number of statements regarding the necessity to rethink Ofcom's approach to content regulation: VLV would be greatly concerned if this is a simply a coded warning regarding the anticipated reduction of content regulation. Given growing concerns regarding the quality of broadcast provision for children (as urged by the Save Kids TV campaign), VLV asks about Ofcom's plans to ensure children's needs and interests will be met.

### **Media literacy**

13. Ofcom notes that as more people gain media literacy, formal regulation to protect audiences from harm and offence in content can be reduced (p.4). While strongly supporting Ofcom's emphasis on media literacy, VLV is concerned at the apparent lack of a policy for those who are relatively low or unskilled in terms of media literacy. Research on media literacy, including in Ofcom's own literature reviews, shows consistently that there will always be a substantial minority who are relatively low in terms of literacy and so may be unable to protect themselves sufficiently from content-related harms. Similarly, the recent review of Harm and Offence in Media Content conducted by Andrea Millwood Hargrave and Sonia Livingstone points out that there is a growing body of empirical work showing that there is a vulnerable minority within the population who are particularly susceptible to the harms of certain media content. There is little or no rigorous evidence that media literacy could provide an adequate means of preventing these risks of harm.
14. Rather than developing a policy to protect these segments of the population, Ofcom seems content with stating the importance of media literacy (e.g. on p.4, Ofcom says 'it will be important for people to develop an improved set of skills and understanding'; e.g. para 4.33, it is stated that consumers will need to become more knowledgeable, etc.). VLV can discern no proposed strategy to address the problem of uneven media literacy among the public and no answer to the obvious question, 'what if (some) people don't develop these skills?' The risk of harm to children and to vulnerable adults is a particular concern here. In short, VLV argues that the risk of content-related harms is increasing, not decreasing, in the emerging communications environment, this raising greater, not lesser, need for regulatory intervention. (The recent case of Big Brother suggests, indeed, that a media literate audience (sensitive to the subtleties of racial slurs) may place greater, rather than reduced, expectations on the regulator to reduce content-related harm and offence.)

15. Despite frequent mentions of medial literacy as a priority, VLV can identify no concrete plan of action regarding the promotion of media literacy in the coming year. Beyond assessing how far the public spontaneously advances in its media literacy, what will Ofcom be doing to promote media literacy? What expectations, or targets, has Ofcom set for changes in media literacy among the population? How, especially, will Ofcom work with the education sector to promote media literacy in schools and colleges? Since the education sector has also been charged with citizenship education, it is important that Ofcom clarifies both its intentions and its working arrangements in relation to education. As in previous years, Ofcom seems content to conduct market research, and to build relations with (largely unspecified) stakeholders. VLV urges concrete proposals to advance key outcomes that demonstrate the successful promotion of media literacy in the year ahead? How will Ofcom evaluate its work in this domain as effective or disappointing?
16. VLV notes the conceptual innovation in the Draft Annual Plan that introduces the concept of communications capability. This is stated but not explained in the document, and VLV would welcome a clear statement regarding Ofcom's understanding of the notion of capability, particularly as distinguished from choice-based or resource-based approaches to inequality.

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*Voice of the Listener & Viewer (VLV) is an independent, non-profit-making association, free from political, commercial and sectarian affiliations, working for quality and diversity in British broadcasting. VLV represents the interests of listeners and viewers as citizens and consumers across the full range of broadcasting issues. VLV is concerned with the structures, regulation, funding and institutions that underpin the British broadcasting system. VLV does not handle complaints.*