

# Digital Replacement Licences offered to Channels 3, 4, 5 and Public Teletext

**Statement**

**Issued: 29 November 2004**

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## Summary

- S.1 This document sets out the most important points of general interest made by the respondents to the Ofcom consultation on digital replacement licences (“DRLs”) issued on 14 September 2004 (“the DRL Consultation”). It explains why Ofcom has reached the various decisions it has in relation to the conditions included in the DRLs offered to Channel 3, Channel 5 and Public Teletext, and in the final draft DRL for Channel 4.

### Statutory requirements

- S.2 Section 215 of the Communications Act 2003 (“the Act”<sup>1</sup>) obliges Ofcom to make an offer of a DRL to all sixteen Channel 3 licensees and to Channel 5. The offer must be made and, if accepted, the replacement licence issued no later than 28 December 2004.
- S.3 If an offer is not accepted the Act requires the existing Channel 3 or Channel 5 licence to cease to have effect at a date to be decided by Ofcom. This date cannot be later than 18 months from the date when the offer closes.
- S.4 Section 221 of the Act requires Ofcom to make an offer of a DRL to Public Teletext following the same procedure and timetable. Section 231 also requires Ofcom to replace Channel 4’s existing licence with a DRL. Channel 4 cannot refuse the new licence but it has a right to comment on a draft.

### Summary of conclusions

- S.5 The DRL Consultation closed on 25 October 2004. Ofcom received 23 detailed responses to the DRL Consultation, most of which were confidential. Ofcom also received a few letters from members of the public. Many respondents stressed the importance of digital switchover (“DSO”) and the potential benefits it could provide. A number also stressed, however, the complexity of the process leading to digital switchover. Ofcom has taken account of the responses and, in consequence, some of the original proposals have been changed.

### Ofcom’s approach to DRLs

- S.6 Some respondents argued that the grant of DRLs and the inclusion of DSO-related conditions should be separate. Ofcom considers however that it is appropriate for the two processes to occur at the same time.

### Digital coverage

- S.7 Ofcom has the necessary legal powers to insert DSO-related conditions in the DRLs, including the proposed digital coverage obligation to apply as from DSO set out in condition 2(2)(b).

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<sup>1</sup> In this Statement all references to sections and sub-sections are to provisions of the Act unless otherwise stated

- S.8 Ofcom wishes to retain the explicit discretion to decide the level of digital coverage included in condition 2(2)(b). This condition has been retained unchanged in the relevant DRL offers.
- S.9 Some respondents expressed concerns that holders of DRLs would still face significant uncertainty as a result of this condition. In January 2005 Ofcom therefore plans to commence a public consultation on the issue of digital coverage under the DRLs, focussing on what “substantially the same” digital coverage at DSO for a DRL should mean and whether Ofcom should require any change of transmission mode. Ofcom aims to publish the results of this consultation by March 2005 and amend the DRLs as a result as appropriate. By these means, Ofcom aims to give licensees and other stakeholders appropriate certainty about digital coverage.
- S.10 Ofcom considers it is premature to decide definitively in December 2004 whether or not 1154 DTT transmitters will be needed to achieve a satisfactory level of digital coverage at DSO. If Ofcom concludes that fewer than 1154 transmitters are needed, the DRLs will be amended accordingly.

### **Co-operation**

- S.11 Ofcom believes that a general duty of co-operation with other parties involved in switchover should be included in all DRLs. Ofcom has, however, decided for the moment to delete all references to Switchco from this obligation. The reasons for this decision are detailed in section 3.

### **Annual report and information**

- S.12 Ofcom has retained unchanged the obligation on holders of DRLs to provide an annual digital switchover report and DSO-related information to Ofcom. Ofcom proposes to issue informal guidance on appropriate content for DSO Annual Reports before 31 December 2005.

### **Information for viewers**

- S.13 Holders of DRLs will be obliged to inform viewers about certain matters relating to DSO, e.g. on the DSO timetable and the relevant regional switchover date. Ofcom has amended the proposed obligation however to respond to concerns that licensees should not be responsible for marketing digital TV or DSO in general.

### **Switchover dates**

- S.14 A backstop switchover date of 31 December 2012 is included in the DRLs. Several respondents pointed to various risks which could endanger this timetable. Ofcom considers these risks are manageable and acceptable.
- S.15 To help manage the risks, Ofcom wishes to confirm the DRL regional roll-out sequence as soon as possible. Detailed proposals for the roll-out of DTT on a regional basis will be set out for discussion as early as possible in 2005.

Ofcom's views on the regional sequence will be informed by that discussion. DRLs will be varied accordingly by the end of April 2005 at the latest.

- S.16 To help manage uncertainty about the DSO date in the licences Ofcom has amended the wording to allow the date to be changed subsequently as a result of Government decision or agreement between Ofcom and the licensee.

### **Seventh multiplex**

- S.17 Ofcom has decided for the reasons set out in this Statement that it will not make available any additional interleaved capacity within the retained spectrum for a seventh multiplex.

### **Timetable for roll-out**

- S.18 The proposed sequence for regional roll-out of DTT will be published as part of the process referred to at S.15. Once finalised, the appropriate sequence will be inserted in DRLs early in 2005 to provide greater certainty for planning and regulatory purposes, including financial reviews.

### **Timetable and process**

- S.19 The offer of the DRLs remains open for 2 weeks until 5pm on Monday, 13 December 2004. All acceptances must be notified by post or fax to Ofcom by this time and date.
- S.20 The final deadline for any comments by Channel 4 on the final draft of its DRL is 5pm on Monday, 13 December 2004.
- S.21 All DRLs will be issued to licensees between 14 and 23 December 2004 inclusive. They shall take effect as from 28 December 2004.
- S.22 If a current Channel 3 licensee, Channel 5 or Public Teletext refuses the DRL it is offered then its existing licence will automatically cease to have effect as from 13 December 2005, i.e. 12 months after the closing date for DRL offers.
- S.23 The deadline for all Channel 3 licensees, Channel 5 and Public Teletext to agree to bring forward the expiry date of their existing licence (if appropriate) is 5pm on 13 December 2004.

### **Regulatory impact assessment**

- S.24 Having considered the responses made by respondents, Ofcom considers that the conclusions set out in the Regulatory Impact Assessment ("RIA") of the DRL consultation remain valid. Specifically, Ofcom continues to consider that it is reasonable and proportionate to include the DSO-related conditions in the DRLs. In relation to the roll-out of DTT, Ofcom continues to consider that the interests of citizens and consumers are likely to be best served if all existing analogue transmitters are converted to DTT, although we propose to retain some flexibility on this issue (see S.10).

## **Other issues**

- S.25 Several licence-specific issues were raised by licensees in relation to various content issues and the application of the Tier 2 quotas (e.g. relating to original and regional production programming).

## Section 1

# Introduction

### Structure and purpose of this document

1. This document sets out the most important points of general interest made by the respondents to the Ofcom consultation on DRLs issued on 14 September 2004. It analyses the various arguments and explains why Ofcom has reached the various decisions it has in relation to the conditions included in the Digital Replacement Licences offered to Channel 3, Channel 5 and Public Teletext, and the revised draft DRL for Channel 4. In a number of cases Ofcom has made amendments to the DRLs offered, but in others has decided not to change the existing wording in the draft DRLs. In some instances the regulator considers it appropriate to include in this Statement certain clarifications of future process and policy to provide guidance and comfort to licensees and other stakeholders.
2. The structure of the document broadly follows that of the DRL Consultation. After an introduction, Section 2 deals with the important issue of digital coverage, followed in the subsequent sections by the issues raised by the other proposed conditions related to digital switchover i.e. cooperation with switchover (section 3), provision of information to Ofcom (section 4), provision of information to viewers (section 5), a digital switchover date (section 6)<sup>2</sup>, the inclusion of a regional rollout timetable and the process involved in offering and then issuing the DRLs (sections 7 and 8).
3. Section 9 deals with the RIA included in the DRL Consultation. Section 10 then covers any remaining issues.
4. The last section contains a summary of the administrative details relating to the offers of DRLs.

### Statutory requirements and background

5. Section 215 of the Act obliges Ofcom to make an offer of a DRL to all sixteen Channel 3 licensees and to Channel 5. The offer must be made and, if accepted, the replacement licence issued on or before 28 December 2004. If an offer is not accepted the Act requires the existing Channel 3 or Channel 5 licence to cease to have effect at a date to be decided by Ofcom. This date cannot be later than 18 months from the date when the offer closes. In practical terms, this means a date no later than mid-2006. (See sections 215(8)(f) and 215(9)(b) of the Act).
6. Section 221 of the Act requires Ofcom to make an offer of a DRL to Public Teletext following the same procedure and timetable.
7. The procedure for replacing Channel 4's existing licence is somewhat different to reflect its status as a public corporation with a special public service broadcasting remit. Ofcom is not required to make an offer of a DRL

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<sup>2</sup> Section 6 also discusses Ofcom's approach to a seventh multiplex

to Channel 4 which the broadcaster may reject. Instead, Ofcom prepares a draft of Channel 4's DRL, notifies the broadcaster of the proposed terms, considers any representations made by Channel 4 and, on the date Government bring into force sub-section 231(1) of the Act, the replacement licence comes into force (section 231(1)(b) of the Act).

8. Overall, the intention of the Act is that the terms of the existing licences held by potential holders of DRLs should be transposed into the new licences. This is stated explicitly in the case of Channel 3, Channel 5 and Public Teletext. The Act requires the service to be licensed under the DRLs to be one that is "equivalent in all material respects" to the existing service. (See sections 215(4)(b) and 221(4)). The Act is less explicit in the case of Channel 4. Section 231(2)(a) merely states that the Channel 4 DRL shall "replace" the current licence and must be a licence to provide the service in digital form. Ofcom's view is that the terms of the Channel 4 DRL should be broadly equivalent to those in its current licence and consistent with those of the other DRLs issued.
9. In some cases the Act makes clear that existing terms are to continue. For example it requires that the amounts which are required to be paid as a result of the current financial terms of the Channel 3, Channel 5 and Public Teletext licences are the same as they are obliged to pay under their DRLs (section 215(6) and 221(5)). In other cases the Act sets out a number of specific conditions which Ofcom is obliged to include in the replacement licences. These for example include conditions to:
  - Give effect to directions of the Secretary of State to continue analogue services (sections 214(3) and 231(4))
  - Ensure the programmes in the analogue service and the times they are broadcast are the same for the digital service (sections 214(4) and 231(5))
  - Prohibit the imposition of charges for reception of the service (sections 214(8)(a); 219(5) and 231(9)(a)).
10. Elsewhere in the Act, Ofcom comes under separate duties to include particular conditions in the replacement licences. The most important of these are the new provisions relating to the PSB remits of licensees and statements of programme policy. These will replace the current requirements for programme genre quotas and the service remits agreed with licensees. The new remits and statements are not required as part of the replacement licence process. They will be introduced as a result of the bringing into force of sections 265 to 269 of the Act, which is planned to take a place at or around the same time as the DRLs take effect on 28 December 2004. Ofcom's first PSB review is due to be completed in early 2005 and its results will obviously affect the content of the remits and statements.
11. The initial expiry date of each DRL shall be 31 December 2014 (section 224(1)).
12. The DRLs will be granted in accordance with the relevant section of the Act and under the provisions of Part 1 of the Broadcasting Act 1990 (the "1990 Act") (see sections 214(1), 215(3), 221(3)(b), 231(2)(a) of the Act.) This means that Ofcom has all the necessary powers under section 4(1) of the 1990 Act to include new and additional conditions in the DRLs which it



considers appropriate. Such conditions must be either: (a) ones which appear to Ofcom to be appropriate having regard to any duties which are, or may be, imposed on it or the licence holder under the 1990 Act, the Broadcasting Act 1996 or the Act; or (b) ones providing for “such incidental and supplemental matters as appear” appropriate to Ofcom. Ofcom will also have the power to change the terms of the DRLs once issued in accordance with section 3 of the 1990 Act. It is under these section 4(1) powers that Ofcom intends to include in the DRLs some of the conditions relating to digital switchover.

13. If the holder of an existing analogue licence rejects the offer of a DRL, its licence will terminate on a date to be decided by Ofcom. This cannot be later than eighteen months after the date the DRL offer closes (s.215(9)(b)).

### Context - Digital Switchover

14. The relevant background to digital switchover in the UK (DSO) was set out in the DRL Consultation.<sup>3</sup> The main points are summarised here and updated as necessary for convenience.
15. In 1999 the Government stated that DSO could start as early as 2006 and be completed by 2010. Switchover would not take place until everyone who could watch the main public service broadcasting channels (BBC1 and 2, ITV 1, Channel 4/S4C and Channel 5) in analogue form could receive them on digital systems; and, that switching to digital was an affordable option for the vast majority of the population.
16. The Government's cost-benefit analysis of switchover estimates the benefits of switchover for the UK to be in the region of £1.5bn to £2bn<sup>4</sup>. Ofcom shares the broad conclusion of this analysis: switchover would give a substantial net benefit to the UK provided the necessary international clearances to use the released spectrum are secured.
17. In April 2004, Ofcom stated in its report, *Driving Digital Switchover*<sup>5</sup>, that we would consider including appropriate switchover-related obligations in the DRLs to help ensure the nationwide roll-out of digital TV. Following that report, and in response to comments received, Ofcom held a number of discussions with broadcasters and platform providers to explore the extent to which the inclusion in DRLs of obligations related to DSO could be a constructive method of bringing more certainty to the timing and process of DSO. DCMS in turn liaised with the BBC, and S4C. These discussions were part of the extensive and long-running process of debate and discussion around DSO that has involved numerous parties since 1999, in various fora including the Digital TV Action Plan and Stakeholders Group. The result was a measure of agreement between many of the broadcasters, Government and Ofcom as to the way forward. On the basis of these discussions, the Secretary of State for Culture, Media and Sport made a written statement<sup>6</sup> on the progress of digital switchover on 22 July. This welcomed the progress made on DSO and indicated that some broadcasters had proposed that DSO should end in 2012, meaning that the switching sequence could begin as

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<sup>3</sup> Paraphs. 28-37

<sup>4</sup> [http://www.digitaltelevision.gov.uk/pdf\\_documents/publications/costs\\_benefits.pdf](http://www.digitaltelevision.gov.uk/pdf_documents/publications/costs_benefits.pdf)

<sup>5</sup> *Driving Digital Switchover: A report to the Secretary of State*, 5 April 2004

<sup>6</sup> Announcement by Tessa Jowell on progress of digital switchover, DCMS, 22 July 2004

early as 2007. It also noted that Ofcom planned to include this timetable in the draft DRLs.

18. The best estimate is that currently around 98.5 per cent of UK households can receive analogue TV signals for the four main analogue broadcasters<sup>7</sup>.
19. At present DTT broadcasts from 80 transmitters. The objective of the current spectrum planning process for DSO is to achieve the desired level of coverage of around 98.5 per cent as follows. The three designated PSB multiplexes will be allocated high power converted analogue frequencies at these 80 transmitters. DTT coverage would be boosted to around 92 per cent. The remaining 1074 analogue transmitters would also be converted, taking the total to 1154. The current estimate is that if the three PSB multiplexes broadcast from 1154 transmitters at the increased level of power, and in the 16 QAM transmission mode, they would achieve 98.5 per cent coverage.
20. DSO is expected to take place on a (Channel 3) region by region basis. Each region would take a period of six months to convert fully. At present, the proposal is that digital switchover should take place over a period of at least four years starting with the Border region. However, it should be noted that the regional order is still subject to change as the plan is further developed and depending on further discussions (see further below).

### **Context - Re-determination of financial terms**

21. Again, background to this issue was set out in the DRL Consultation but summarised here and brought up to date for convenience.
22. Ofcom will be obliged to review the financial terms of DRLs after they have been issued to Channel 3, Channel 5 and Public Teletext if these broadcasters apply for a redetermination (section 225). The licensees may apply for a review of their financial terms during a three year window which begins on a date four years before the expiry date of their existing analogue licence (section 225 (2)). Following consideration of the responses to various consultations, and to ensure potential holders of DRLs are treated equitably, Ofcom decided that holders of Channel 3, Channel 5 and Public Teletext licences should each be offered the option to bring forward their existing expiry date if it is later than 31 December 2008. To exercise this option, however, those who wish to have their end date brought forward must have the expiry date of their current licence varied by consent before issue of their DRL. All Channel 3, Channel 5 and Public Teletext DRL licensees will therefore have the same opportunity to make an application for a financial review on or after 31 December 2004.
23. Following several public consultations, Ofcom published its Methodology Statement for reviews of financial terms for Channel 3, Channel 5 and Public Teletext licences on 13 October 2004. This set out the valuation methodology to be followed by Ofcom in deciding new financial terms for these licences. Ofcom plans to issue in December 2004 a revised statement on qualifying revenue, having consulted Government as required.

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<sup>7</sup> See technical paper produced by the Digital Television Action Plan's Spectrum Planning Group dated 4 May 2004

24. Licensees who apply for reviews will have the option to accept or reject the new terms offered. If a licensee rejects the new terms, the existing financial terms will remain in place. The DRL will then terminate at a date to be fixed by Ofcom (section 228(2)(d) and 228(4)). Ofcom has not specified as yet what that date may be, but it cannot be set before the expiry date of the current analogue licence.
25. Although linked, the grant of replacement licences and the possible review of licensees' financial terms are separate, both chronologically and procedurally.

## DRL Consultation

26. The DRL Consultation, together with draft DRLs, were published on 14 September 2004 with a closing date for responses of 25 October 2004.

## Ofcom's approach to DRLs

27. The proposed inclusion of DSO-related conditions in the DRLs was at the core of the DRL Consultation. As pointed out above, Ofcom suggested that it would consider including appropriate switchover-related obligations in the DRLs to help ensure the nationwide roll-out of digital TV in April 2004 in *Driving Digital Switchover*. In discussion with broadcasters and others prior to the DRL Consultation, Ofcom and government then explored the inclusion in DRLs of obligations related to DSO. Partly as a result of those discussions and in light of its statutory duties, Ofcom's provisional view set out in the DRL Consultation was that the DRLs could helpfully include conditions relating to the implementation of DSO. This was because there appeared a series of potential and significant benefits in setting out a route map to DSO by way of DSO-related conditions in the DRLs, as opposed to issuing DRLs with little or no reference to digital switchover.
28. A number of respondents supported, or at least did not object to, this overall approach. Others however challenged it in their responses. They argued that the grant of DRLs and any inclusion of DSO-related conditions should be separate. Their main points were that: the DRLs were not intended to set a route map for DSO; Channels 3 and 5 should have an opportunity to apply for a licence which was the digital "equivalent" of their existing analogue licence; Ofcom could vary the licences at a later date once issued; the regulator's decision to seek to link DRL conditions to DSO injected an unnecessary urgency into the process of issuing the new licences; and, it was premature for Ofcom to include DSO-related conditions in the DRLs before the BBC's role in DSO was clarified.
29. The DRLs have a duration of just over ten years. They were intended by Parliament to be held by the licensees, and carry them, through switchover. It was therefore entirely appropriate that Ofcom should consider what conditions relating to DSO should be included in the DRLs. Ofcom was also aware that considerable public benefits would follow from DSO, and that the earlier switchover took place the greater these would be. A detailed cost-benefit analysis had already quantified these benefits and they had been the subject of public debate. In addition, Ofcom had to have regard to its statutory duty to secure the optimal use of the radio spectrum (section 3(2)(a) of the

- Act). DSO in Ofcom's opinion is one of the principal means of fulfilling this duty over the next decade. In the light of these reasons, Ofcom considered it was a necessary and appropriate exercise of its discretion to include DSO-related conditions in the DRLs using our powers under section 4(1) of the 1990 Act.
30. Further, there are important practical, financial and regulatory reasons why Ofcom should help to resolve the uncertainty surrounding DSO by including DSO-related conditions in the DRLs now. Ofcom could have offered DRLs which did little more than replicate the current analogue licences. This may however have raised difficult issues at a later stage when a (possibly delayed) switchover approached and Ofcom wished to vary the licences to include DSO-related duties. Contrary to what has been suggested, it would not necessarily have been straightforward for Ofcom to vary the licences after issue. Some of the obligations the regulator may wish to have included later might well have had material cost implications for licensees. Ofcom, however, would not always be able to reflect these in the licence payments made to the Treasury. This is because it is likely that a number of licensees by this later date, when Ofcom wished to add DSO-related conditions, would have already had their financial terms re-determined by Ofcom. Once determined under the 2003 Act, financial terms cannot be altered except under very special circumstances – which do not include a desire by Ofcom to include most of the proposed DSO-related conditions in licences which might materially affect their value. Licensees may therefore have objected to Ofcom imposing new obligations at a later date, unless it happened to coincide with an opportunity to review their financial terms.
  31. Further, Ofcom is under a duty to issue DRLs for a service which is “equivalent” in all material respects to the current one. A major objective of granting DRLs is to help prepare for DSO by ensuring these terrestrial broadcasting licences are primarily digital rather than analogue. Ofcom therefore needs to think ahead and ensure the DRLs cater for what “equivalent” means at and after DSO, in view of the fact that DSO is planned to occur within the duration of the DRLs.
  32. The regulator does not consider that it is displaying any inappropriate urgency by including DSO-related obligations in DRLs on issue. The uncertainties surrounding DSO have been narrowed by developments in 2004, and are in fact decreased further by including appropriate duties concerning switchover in the DRLs and by some clarifications offered in this statement. The achievement of DSO depends on successfully co-ordinating many interdependent factors. It is Ofcom's opinion that the risk of delay is increased unnecessarily and unacceptably if the opportunity to contribute to the overall plan by including DSO-related conditions in the DRLs is missed.
  33. Ofcom does not think it appropriate to wait for further clarity about factors beyond its control (e.g. on the role of the BBC in switchover) before inserting these conditions. Ofcom also recognises that DSO may not be in the short-term commercial interests of some holders of analogue licences because of the loss of analogue advertising revenue for example. DSO-related conditions in DRLs are required to ensure Ofcom has the regulatory powers to exercise if necessary to ensure licensees co-operate with the DSO process.

## Section 2

# Digital Coverage

## Introduction

34. This section summarises Ofcom’s approach to deciding what digital coverage condition to include in the DRLs ie what duty to impose as regards the areas of the country and/or the number of people which would be covered by the service. These issues were addressed in questions 1, 7, 9 and 11 in the DRL Consultation. Points of general interest concerning Channel 4 and Public Teletext are dealt with later in this section of the statement.

## Channel 3 or Channel 5 services

### Statutory requirements

35. The Act requires Ofcom to ensure that the service of Channel 3 and of Channel 5 which it proposes to license by the DRL is one that “appears to Ofcom to be a service that is equivalent in all material respects to the service the provision of which in analogue form was authorised by the existing licence” (section 215 (4)(d)). This includes ensuring that the digital service continues to serve the same geographical area. The Act recognises the possibility that it may not be technically feasible to match the current analogue coverage or times of broadcasts exactly with the digital form of the service. The requirement set out in section 214 (4)(b) may be relaxed to the extent that Ofcom is given discretion to “propose the grant of a [DRL] licence to provide a service for an area ... which, though substantially the same as in the case of the existing licence” is not identical (section 215(5)). It is also worth noting that Channel 3 is a nationwide service, organised on a regional basis: Section 14(1) 1990 Act. This means inevitably that Channel 3 must have nationwide coverage obligations. The 2003 Act has not altered this fundamental principle. Ofcom has a duty to “do all they can to secure the provision” of this service (section 14(1) of the 1990 Act).
36. Ofcom’s analysis of the 2003 Act<sup>8</sup> shows that DRLs are terrestrial, not all platform (i.e. terrestrial, cable and satellite), licences. Since the DRLs are terrestrial licences, it follows in Ofcom’s opinion that digital coverage obligations provided under them should be by digital terrestrial means.

### Digital coverage and the DRLs

37. In the draft DRL Ofcom proposed that until switchover Channels 3 and 5 must continue to be under a duty to provide their current analogue service, and provide that analogue service in digital form to be broadcast on a television multiplex. Under the existing Channel 3 and Channel 5 licences, the licensee is under no obligation as to the coverage area to be achieved by its service when broadcast in digital terrestrial form. It is the holder of the multiplex licence which is under a duty to broadcast from a set number of stations. This

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<sup>8</sup> See principally ss.215(4), 215(10)(b), 232 and following, and 362(1)

would continue until switchover. These proposals did not raise any objections from respondents.

38. As from the date of digital switchover, however, Ofcom considered it was necessary to include in the DRL a coverage obligation to be met by the digital service. This was to fulfil Ofcom's duty under the Act that the digital service must be one that appears to Ofcom "equivalent in all material respects" to the current analogue one. In Ofcom's opinion, the digital service Ofcom was proposing to license by the DRL covered the digital service throughout the period of the licence, both before and after switchover; and "equivalent in all material respects" included equivalent coverage. In addition, the Act gives Ofcom the specific additional power and discretion to grant a DRL to Channel 3 or Channel 5 to provide a service for a geographical area which was "substantially the same" but not identical to the existing analogue one. To fulfil this duty and using this discretionary power, Ofcom considered it appropriate that the DRLs should specify what the coverage area should be as from the switchover date and express it in terms of digital terrestrial coverage because, in Ofcom's view, DRLs only license the service on the DTT platform.
39. Ofcom therefore proposed condition 2(2)(b) on digital coverage. The draft condition stated that the coverage area to be achieved as from the switchover date "shall be equivalent to, or to such extent as Ofcom thinks fit, substantially the same as the coverage area" achieved by the current analogue licence by broadcasting from their existing analogue transmitters.

#### **Points made by respondents**

40. Some respondents supported Ofcom's approach of requiring digital coverage as of DSO to be "substantially the same" as under the current analogue licence. Basing digital coverage on that achieved by existing analogue stations was regarded as practicable. Ofcom's intention not to express the DRL coverage obligation as at DSO in terms of the percentage of households covered was also welcomed.
41. Other respondents disagreed with Ofcom's approach in the draft DRL. They argued that the proposed digital coverage condition (condition 2(2)(b)) as regards Channel 3 licensees was not necessary, appropriate or proportionate. The main arguments put forward by these respondents are as follows.
42. First, Ofcom did not have the legal power to insert the proposed coverage condition 2(2)(b) in the DRLs. The 2003 Act, they suggested, does not place a duty on Ofcom to require that current levels of analogue coverage be met by the public service broadcasters through DTT transmission. Nor does the 2003 Act give Ofcom the necessary discretion to impose an obligation in the DRLs in respect of coverage area at all. They also argued that DRLs are not confined to licensing the service on the terrestrial platform but may also cover cable and satellite.
43. Second, that the proposed coverage condition 2(2)(b) was inconsistent with Ofcom's stated policy. In the DRL Consultation Ofcom made clear<sup>9</sup> that it accepted that it would not be appropriate to include a condition for digital coverage that would be set by reference to a percentage of households which could receive DTT. Some respondents argued however that the draft condition did in fact contain an implicit obligation to achieve a coverage of

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<sup>9</sup> Para.63

98.5 per cent of households. This was because for example Ofcom had cited this percentage as the “desired” coverage in the DRL Consultation<sup>10</sup>. The primary coverage obligation, these respondents argued, would relate to this desired objective of securing 98.5% coverage rather than broadcasting from the 1154 transmitters set out part 5 of the Annex.

44. Third, the wording of Condition 2(2)(b) retained for Ofcom the discretion to require that the coverage area be either (a) equivalent to; or (b) substantially the same as analogue; or (c) as broadcast from 1154 transmitters. It was argued that this condition imposed a duty of open-ended and uncertain scope. It was suggested for example that Ofcom might use this discretion to seek to force holders of DRLs to build out well beyond the 1154 transmitters suggested, or compel a change in transmission mode, in order to meet an implied 98.5% coverage obligation. This condition would place a potentially open-ended, and so disproportionate, obligation on holders of DRLs. It was also argued that Ofcom, by suggesting in the DRL Consultation that 98.5% coverage is a desired policy objective, had in fact already defined “substantially the same” as “exactly the same”.
45. Fourth, it would be disproportionate to impose an absolute obligation on holders of DRLs to build out to 1154 sites if this does not prove necessary to achieve the necessary level of coverage agreed in the DTT spectrum plan.
46. Fifth, Ofcom’s proposal was unrealistic and impractical. At present in analogue licences the coverage obligation is expressed in terms of a duty to transmit from a specified list of transmitters at certain technical standards. This achieves a certain level of coverage in terms of households receiving the service. It would not be possible, these respondents asserted, to be certain what level of coverage would be achieved with DTT until the date of DSO and, even then it would be subject to the vagaries of weather, local buildings and other factors. The coverage obligation in the DRLs should therefore be expressed in a similar way to that in analogue licences, i.e. solely in terms of inputs rather than outputs

### Ofcom response

47. In response to the first argument, Ofcom considers that the 2003 Act does oblige it to require that current levels of analogue coverage be met, or substantially met, by the public service broadcasters through DTT transmission as from DSO. As explained above, Ofcom’s statutory **duty** to ensure that the DRL service of Channel 3 and 5 is “equivalent in all material respects” means the DRL digital service after DSO must cover the equivalent geographical coverage area as the current analogue service. This duty is not absolute and is subject to Ofcom’s **discretion** to relax this requirement to allow the service to cover “substantially the same” area. This “equivalent” or “substantially the same” wording was therefore tracked into draft Condition 2(2)(b).
48. Ofcom wished to fulfil that duty and/or exercise this discretion by reflecting the conclusion of the RIA. This was that, of the options considered, the most fair and reasonable way of achieving the aim of “equivalent” or “substantially the same” digital coverage is to require holders of DRLs to aim to achieve the same coverage in digital as is currently realised by broadcasting from the

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<sup>10</sup> Para.34

present 1154 transmitters. This, Ofcom believed, would give licensees a sufficiently clear standard by which to judge their coverage obligation.

49. In addition, and in any event, Ofcom is clear it has the necessary legal powers to insert DSO-related conditions in the DRLs, including the proposed coverage obligation in Condition 2(2)(b). These powers are derived from section 4(1) of the 1990 Act. For the reasons stated in the DRL Consultation<sup>11</sup>, Ofcom also believes that DRLs are terrestrial, and not all platform, licences. The digital satellite and cable versions of Channel 3, Channel 4, and Channel Five services are licensed for example by means of television licensable content service licences.
50. As regards the second and third arguments, the regulator appreciates that draft Condition 2(2)(b) did have elements of uncertainty as to the coverage obligation. The duty could be measured by reference to the coverage being required to be equivalent to analogue; or substantially the same as analogue; or that achieved by broadcasting from 1154 transmitters. Ofcom retained the discretion, if the level of coverage as set by the 1154 transmitters was insufficient, to increase it by arguing that its duty was to ensure coverage “equivalent” or “substantially the same” as under analogue. Although in theory open-ended, Ofcom’s discretion can only be exercised reasonably and proportionately however. The regulator could not use it to impose unreasonable and disproportionate burdens on licensees. The ambit of the proposed duties placed on DRL licensees would have been limited accordingly.
51. Ofcom does not intend to impose a coverage obligation by explicit reference to any particular set percentage of households, and it has not yet decided what “substantially the same” coverage should be as at DSO. Nonetheless, and although the proposed Condition 2(2)(b) to some extent merely tracks the statutory wording, Ofcom acknowledges that its proposal to retain this discretion in this area has caused concern to some respondents.
52. In early January 2005, therefore Ofcom plans to commence a public consultation on the issue of digital coverage under the DRLs. This will focus on what “substantially the same” digital coverage at DSO for a DRL should mean, as well as discussing the question of whether Ofcom should require any change of transmission mode.
53. Ofcom aims to publish the results of this consultation by March 2005 at the latest. As appropriate, Condition 2(2)(b) in the DRLs will be amended to give licensees more certainty, and to set the level of coverage obligation with sufficient clarity to enable Ofcom to take this into account as necessary in any review of financial terms. Any amendments made after the consultation would aim to give, in Ofcom’s opinion, appropriate comfort to Channels 3 and 5 that their duty to build DTT transmitters, and broadcast from them at certain power levels and in a certain mode, could not be extended beyond that set out in Part 5 of the Annex and that they will not be liable for uncapped costs.
54. In response to the fourth argument, Ofcom agrees that it is premature to decide definitively in December 2004 whether all 1154 transmitters will be required to achieve a satisfactory level of digital coverage at DSO. If, as a

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<sup>11</sup> Para.52 and footnote



result of the consultation on coverage or later, Ofcom concludes that fewer than 1154 transmitters are needed, the DRLs will be amended accordingly.

55. As regards the fifth argument, Ofcom notes the points made by some respondents in favour of measuring the DSO digital coverage obligation solely in terms of inputs. Ofcom's views on this subject will be further informed by the public consultation on digital coverage referred to in paragraph 52, before the regulator takes any decisions to refine the digital coverage obligation early in 2005.
56. Until the results of this consultation are known, Ofcom wishes to keep the discretion to decide the level of digital coverage included in Condition 2(2)(b). This Condition has therefore been retained unchanged in the DRL offer.

#### **Channel 4 and Public Teletext**

57. The points we make above as regards digital coverage also apply to the Channel 4 and Public Teletext DRLs. As far as possible and appropriate, Ofcom wishes the digital coverage obligations to be the same for all DRLs, to ensure consistency, certainty and equity as between licensees. Issues specific to particular licences will be addressed in correspondence with the licensees concerned.

## Section 3

# Cooperation

### Reaction to Ofcom's proposal

58. This section summarises replies to questions 2, 8, 10, and 12 in the DRL Consultation.
59. In view of its implied duty to promote digital switchover, Ofcom included in all the draft DRLs an obligation on licensees to co-operate with everyone involved in the administration, organisation or implementation of digital switchover in the UK. These parties could be other Ofcom licensees or a body set up to oversee the implementation of switchover in the UK. As at the time of publication of this statement, active discussions continue between broadcasters, Government, Ofcom and others about the creation and constitution of such a body dubbed "Switchco".
60. The majority of respondents supported the inclusion of a condition imposing an obligation on licensees to cooperate with the process of DSO, and most of these welcomed the creation of Switchco and a duty to cooperate with it. A number made constructive suggestions about the structure, purpose and membership of Switchco which Ofcom has noted but do not need to be detailed here.
61. Other respondents argued that these provisions were not necessary or proportionate and should be deleted. They suggested that: since broadcasters would be obliged to make their digital service available nationwide by the date of DSO, they had no alternative but to cooperate or face sanctions for breach of licence; and that other proposed licence provisions compelling licensees to provide information to Ofcom was sufficient. Alternatively, they proposed that the drafting should omit any reference to Switchco because it was still embryonic, and that Ofcom should make clear the limits on licensees' duty to cooperate with this body.

### Ofcom response

62. Ofcom has considered all the points made by consultees. It remains convinced that a general duty of cooperation with other parties involved in switchover should be included in the licence. It is correct that licensees will be required to broadcast their digital service to certain specifications as of DSO. A large number of preparatory, complex and inter-linked steps (some of which may not yet be known) must be completed before that date, which will require coordination and cooperation between all the stakeholders involved. An obligation to provide information to Ofcom does not place the licensee under a duty to cooperate to help fulfil these steps and nor does it give Ofcom the power to intervene if necessary. Further, since aspects of DSO may not be in the commercial interest of certain holders of DRLs it is possible that they may consider delaying or obstructing some important decisions or actions. If this happens, the licensee must do so in the knowledge he is under a duty to cooperate and that Ofcom has an express power to take appropriate action.

63. Switchco has not yet been set up. There is still some uncertainty as to its final membership, funding and constitution. Ofcom has therefore decided to delete all references to Switchco in the revised paragraph 9 of Part 2 of the Annex to the Regional Channel 3 DRL and corresponding paragraphs in other DRLs. When Switchco has been established, however, Ofcom may reconsider the position. Licensees should note that Ofcom retains the power under the revised wording to notify Switchco to licensees under paragraph 9(1)(c) of the Regional Channel 3 DRL (and the corresponding paragraph of other DRLs). Alternatively Ofcom may consider amending the paragraph to add an express reference to Switchco. The wording of any proposed variation would naturally be subject to representations made by the licensees affected.
64. Some respondents suggested that to place a duty on holders of DRLs to “fully cooperate” would be too onerous and that the phrase had too uncertain a meaning. In order to lighten the regulatory obligation, Ofcom has therefore amended the wording so that the licensee is now under a duty to “use all reasonable endeavours to cooperate”. If Ofcom wished to take any enforcement action under this condition it would of course be required to exercise its power reasonably and proportionately. Ofcom could not for example reasonably sanction a licensee for refusing to take an action which would cause it to breach its licence.
65. Ofcom has taken into account the comments made by respondents and changed draft paragraph 9 of the Regional Channel 3 DRL, and the corresponding paragraph in other DRLs, accordingly. The revised paragraph is in Ofcom’s opinion necessary, appropriate and proportionate.

## Section 4

# Annual Report and Information

## Reaction to Ofcom's proposal

66. Responses to questions 3, 8, 10, and 12 in the DRL Consultation are dealt with in this section of the Statement.
67. In paragraph 10 in Part 2 of the Annex (and the corresponding draft paragraph in the other DRLs) Ofcom proposed to oblige the licensee to send Ofcom an Annual Report giving details of his compliance with the conditions in the licence relating to provision of the digital service and with the other licence provisions related to digital switchover, and of his plans (including budgets and expenditure) to fund the roll-out of equipment and/or infrastructure relating to digital switchover. The licensee could also be obliged to provide interim reports in respect of progress towards digital switchover.
68. Only one respondent objected outright to this draft paragraph, arguing that a licensee would not be able to give details of their compliance with the Provision of Service and Digital Switchover Conditions since they were not specific enough. Other respondents supported, or did not object, to the proposed paragraph. Some expressed concern that this duty should not place a disproportionate burden on licensees and that they should not be expected to respond to multiple requests for information from Ofcom, Switchco (once set up) and others.

## Ofcom response

69. In view of the widespread support for the draft paragraph in the responses, Ofcom sees no reason to amend it. Insofar as a licensee is required to give details of his compliance with any obligation in their DRL which he regards as insufficiently clear, he should seek guidance from Ofcom. The regulator does not intend this duty to provide information to be disproportionate or inappropriately burdensome. To help avoid this as far as possible, Ofcom proposes to issue informal guidance on appropriate content for the Annual Report envisaged in the paragraph to licensees in advance of 31 December 2005. To make it clear that Ofcom would not make unfair demands of time and cost on licensees as regards interim reports, sub-paragraph (3) is subject to the limitation that the report must be one which Ofcom must "reasonably require".

## Section 5

# Information for viewers

### Response to Ofcom's proposal

70. Responses to questions 4, 8, 10, and 12 in the DRL Consultation are dealt with in this section.
71. As was pointed out in the DRL Consultation, in the period preceding DSO viewers will require information on a wide range of issues, such as: which switchover region they are in and the date for switchover in their area; different methods of receiving digital TV; how to recognise switchover-compliant reception equipment; how to make sure their VCR works after switchover; and how to convert to digital all the television sets they want to continue to use after switchover. It is however switchover information specific to their licences for which Government and Ofcom expect the broadcasters to take lead responsibility.
72. Ofcom considers that it should do what it can to ensure that the specific regional switchover information outlined above is made available to viewers by the holders of DRLs. To ensure that licensees are in no doubt as to their duties, and to give Ofcom a means of enforcing them, the regulator included a draft condition to help achieve this aim in the DRLs.
73. A number of respondents objected to the obligation as proposed. Their main arguments were as follows.
74. First, that it was not appropriate for the holders of a DRL to be obliged to market digital TV or DSO in general. This was for Government, or possibly to some extent one respondent suggested, the BBC and/or Switchco. It should be their obligation only to inform viewers of changes to their service as of switchover. Second, a number of respondents suggested the obligation was too onerous, obliging licensees to use their "best endeavours" rather than "reasonable endeavours", and to make all viewers "fully aware". Third, the duty was too open-ended and could impose open-ended marketing commitments on licensees.

### Ofcom response

75. Having reviewed all the comments made, Ofcom remains of the view that holders of DRLs should be obliged to inform viewers about most of the matters set out in draft paragraph 11(1) of Part 2 of the Annex which relate to the licences eg the DSO timetable, the regional switchover date, and how to receive the licensee's service after DSO. Ofcom however acknowledges licensees' concerns that they should not be responsible for marketing digital TV or DSO in general, with the possibility that this could lead to them being forced to incur high costs, and that the duty as originally drafted could be argued to be too onerous.
76. This paragraph has been amended by Ofcom to take account of these concerns in, what Ofcom's opinion is, an appropriate way. The heading of the

whole paragraph has been changed to “Communications with viewers” to make clear that the licensees are not engaged in marketing. To lighten the burden of regulation, the licensee will only be required to use “reasonable endeavours” to “inform” viewers rather than make them “fully aware” of the matters referred to in sub-paragraph (1)(a); and the ambit of the information covered by sub-paragraph (1)(b) has been slightly narrowed.

77. Ofcom considers that the holders of DRLs should be under a specific duty to agree with Ofcom in advance how they are to comply with their obligations under paragraph 11(1) (and the corresponding paragraph of other DRLs). This is to help ensure clarity about this obligation, and consistency as between licensees as to the level and type of information they provide to viewers and to enable licensees to plan ahead in the light of guidance from the regulator.

## Section 6

# Switchover Date

## Response to Ofcom's Proposals

78. This section relates to questions 5, 8, 10, 12 and 15 in the DRL consultation document ie the proposal to include in the DRLs a back stop digital switchover date of 31 December 2012 and the costs and benefits of doing so.
79. In 1999, the Government stated that the process of digital switchover could start as early as 2006 and be completed by 2010, although the precise dates would depend on the behaviour of broadcasters, manufacturers and consumers. Since 1999 there has been extensive work by the broadcasting industry, transmission providers, Government and others on the process and implications of DSO. In the light of all the information available at the time the DRL Consultation Ofcom therefore proposed to include 31 December 2012 in the DRLs as a backstop date by which its licensees should be obliged to cease broadcasting their analogue signal. As already indicated, the Government has noted that some broadcasters had suggested 2012 as the year when DSO should be completed, with switchover beginning in 2007.
80. There was support from some respondents for the setting of the 2012 date for switchover. However, several respondents did express concern that whilst the 2012 date was possible its implementation would be subject to a number of risks which could result in this date not being met. These risks focussed on two specific areas:
- (a) Regulatory risk:** the risk that decisions and actions by the regulator and/or government could significantly affect the broadcasters ability to achieve switchover by the 2012 date; and
- (b) Implementation risk:** the risk that elements of the switchover process could be delayed, for instance by poor weather during one or more summers when crucial engineering work would need to take place or by late delivery of critical parts for the aerial or transmission upgrade.
81. Respondents also expressed concern that the process of agreeing a credible project plan would be difficult within the proposed timescale given that a number of key elements had not yet been agreed. The key issues raised were: whether Ofcom would license a seventh multiplex in the retained spectrum, the number of sites to be adopted, the sequence of regions to be converted and the power and mode of the transmissions to be broadcast (especially concerning the public service multiplexes).

## Ofcom response

82. **Regulatory uncertainty:** Ofcom has identified a number of regulatory actions that have a bearing on the achievement of DSO. It expects to complete all of these by March 2005. These comprise:
- Issue of DRLs: due for completion by 28 December 2004

- Seventh multiplex decision: see paragraphs 89 to 93 below.
  - Coverage (power and mode) decision: Consultation proposed for early in 2005. This will provide confirmation of the public service multiplex digital coverage requirements.
  - Switchover sequence decision: see paragraph 100.
  - Commercial mux roll-out decision: Ofcom has requested the operators of the three commercial multiplexes to confirm their roll-out requirements for switchover by the end of February 2005. This should address the number of sites (from their current number up to a maximum of 200) and the power levels they wish to adopt at switchover.
  - Broadcasting Transmission Market Review: A consultation on this issue has now been issued by Ofcom<sup>12</sup>. Ofcom expects to issue a final statement on this by March 2005.
83. Once the coverage and sequence consultation had been carried out, Ofcom would reflect these in updated requirements for digital coverage and regional roll-out in the DRLs. Ofcom would aim to complete any consequent variations of DRLs and changes to the multiplex licences by the end of April 2005 at the latest.
84. Ofcom has separately proposed in its consultation document on spectrum pricing<sup>13</sup> the introduction of administrative incentive pricing for analogue spectrum used for television broadcasting. These proposals took account of Ofcom's plans as regards DSO. The regulator likewise had regard to the proposals on the administrative incentive pricing of analogue spectrum in preparing the DRLs.
85. **Implementation Risk:** This risk falls into two areas. The first is whether broadcast licensees will be penalised by Ofcom for failing to complete switchover by a specified date due to factors outside their control. Some respondents proposed that the width of the force majeure condition in the DRLs should be extended to cover many circumstances which would make it impossible for a licensee to fulfil its duties under the licence as regards applicable switchover date and so place it in breach. In the light of the amendments to the wording of this condition referred to below in this paragraph, Ofcom did not consider such a change necessary. In any event, in making any determination regarding breach of licence conditions Ofcom would always take into account all of the factors affecting a breach and would be required to act reasonably in the making of any decision regarding further actions (including sanctions) it may take. Key elements in making such a determination would be the robustness of the project planning process adopted by the broadcasters and transmission providers and the timely provision of information from the licensees throughout the switchover programme. This is an important reason why Ofcom has required that all licensees provide Ofcom with an Annual Report detailing progress being made through each year towards switchover.

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<sup>12</sup> Broadcasting transmission services: A review of the market, published 11 November 2004

<sup>13</sup> Ofcom consultation on Spectrum Pricing, published 29 September 2004



86. Some respondents pointed out that the Government retains the power under section 224 of the Act to fix a date for switchover and that they should be in the lead in this matter. Ofcom is confident that it has sufficient and separate legal powers under section 4(1) of the 1990 Act to insert a DSO backstop date in the DRLs in order to fulfil its various duties under the Act. The Government have also stated in July this year that they support the switchover process being adopted by Ofcom. The DSO backstop date in the DRLs may have to be reviewed in the light of any further Government announcements about switchover. The wording of this DRL condition has been amended to reflect this possibility, or that the date may be altered by subsequent agreement between the regulator and licensee
87. The second risk is that licensees and transmission providers will have to contract with each other to procure and build the new digital only transmission network. Any such contracts will obviously carry a degree of risk for both sides but Ofcom would view this as part of normal commercial dealings, which these organisations should be in a best position to manage. Ofcom views its principal responsibility as to minimise regulatory uncertainty and to set clear and achievable objectives for DSO in the licences.
88. Ofcom is working closely with the broadcasters to ensure that a credible project planning timeline is adopted for the implementation of switchover. It is Ofcom's opinion that this process is best managed by the broadcasters and transmission companies. However, Ofcom does wish to ensure that the timetable adopted by the DRLs is consistent with the practical issues that have to be taken into account in the designing and implementing the project plan. These discussions will be carried forward through to the end of the year but Ofcom currently considers that the 2012 timetable is credible.

### **Ofcom's decision on a seventh multiplex**

89. Ofcom has carefully considered the requests made by some respondents for it to clarify its position on licensing additional multiplexes within the retained or cleared spectrum. This is obviously an important matter both with regard to the practical issues associated with implementing the switchover plan (it would be more efficient to adopt any additional multiplexes in the current plan rather than try and update the plan in three or four years time) and with the licensing of any additional capacity if Ofcom decided to make this available.
90. Ofcom can now confirm that it has decided that it will not make available any additional interleaved capacity within the retained spectrum for a further (seventh) multiplex. It concluded that whilst it was possible to identify sufficient spectrum within the interleaved capacity to plan for an additional multiplex the coverage of such a multiplex would be significantly lower than that current projected for the three commercial multiplexes. It was predicted that a seventh multiplex would only be able to reach up to 75 per cent of UK homes (up to 15 per cent lower than that available for multiplex D).
91. It was further found that any additional multiplex using these frequencies would actually reduce the coverage of the three commercial multiplexes by up to five per cent. It was considered possible to mitigate some of these problems through a re-planning of the switchover plan. However, this would have added up to a year to the already tight timetable, thereby delaying switchover, and the gains projected for this replan were considered by Ofcom to be marginal at best.

92. Ofcom also has to consider carefully how any further use of this spectrum would affect the programme making sector which currently makes extensive use of the interleaved spectrum for programme making and links. Ofcom will now evaluate how any capacity that does become available at switchover within this retained band could be licensed taking into account the programme making requirements and other potential applications.
93. Ofcom has previously stated<sup>14</sup> that no decisions will be taken on the use of the fourteen cleared channels until after the outcome of the Regional Radiocommunications Conference in 2006 is known. Ofcom will, however, evaluate carefully the full range of services that this spectrum could accommodate at switchover in order that any decisions taken after 2006 will be well informed about the technical and commercial issues affecting this decision.

### **Conclusion on switchover date**

94. On balance, and taking into account the arguments made by various respondents and all the points made above, Ofcom has decided that a DSO backstop date of 31 December 2012 should be included in the DRLs. This date will however be subject to later possible variation as a result of a decision of Government or agreement between Ofcom and the licensee.

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<sup>14</sup> Driving Digital Switchover, Ofcom report to the Secretary of State, April 2004

## Section 7

# Timetable for Roll-out

### Response to Ofcom's proposals

95. This section deals with questions 6, 8, 10, and 12 of the DRL consultation which concerned the proposal to include a digital switchover timetable in the DRLs.
96. Part 3 of the DRL Annex set out a draft timetable for the conversion from analogue to digital television broadcasting of all the main stations and dependent relays listed in Part 5 of the Annex to the Channel 3 DRLs and Part 4 to the Channel 5 DRL. It was not possible as at the time of publication of the DRL Consultation to include what is proposed to be the final version of this timetable in the licences. The list of stations and dates would naturally vary from licence to licence, reflecting the current list of transmission stations and the sequence of regional switchover. It would be a duty of the licensee to ensure that this timetable is met.
97. There was strong support from consultees for the inclusion of a timetable in the licence. Some respondents expressed the view that the timetable should be agreed and inserted in the DRLs being issued during 2004 rather than delayed until 2005. Others expressed concern that the early publication of the sequence would raise concern and possible confusion amongst the members of the public.
98. It is also desirable to achieve clarity in relation to the planned sequence of switchover on a region by region basis in order to reduce uncertainty in relation to the reviews of DRL financial terms. Ofcom has stated in the Methodology Statement on financial terms<sup>15</sup> that it expects to have regard to the most up-to-date available information on this issue, and a number of other matters relevant to the reviews, when it makes determinations on financial terms by the end of June 2005 for those licensees who apply on or before 31 December 2004.

### Ofcom response

99. Discussions are still in progress with broadcasters and others to agree the exact planned dates for switchover in different regions. It is therefore not possible to include a region by region switchover timetable in the DRLs when they are issued. The DRLs have been amended to reflect this but specifically note that a timetable will be added by way of variation when agreed.
100. Since the DRL Consultation was issued, Ofcom has carried out further work on the draft regional timetable with frequency planners, broadcasters and the Government. It is now intended to publish for discussion the proposed sequence as early as possible in 2005. Ofcom's views on the regional sequence will be informed by that discussion. The regulator aims to finalise as soon as possible the appropriate region by region sequence to be adopted for digital switchover. This would then be inserted in all the DRLs early in

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<sup>15</sup> [Statement on methodology for reviews of financial terms for Channel 3, Channel 5 and Public Teletext licences](#), Ofcom, 13 October 2004

2005 to give all stakeholders and Ofcom the necessary certainty for planning and regulatory purposes, including for financial reviews.

## Section 8

# Timetable and process

### Response to Ofcom's proposals

101. This section deal with responses to questions 13 and 14 in the DRL Consultation (i.e. process and timetable, and the date when the current licence of someone who refuses a DRL terminates).
102. Ofcom pointed out in the DRL Consultation that it must work to a strict timetable in order to meet the statutory deadline of issuing replacement licences by 28 December 2004. The period between closing of the consultation and issue of the DRL offers was extended slightly to 29 November to allow Ofcom time to assess the considerable number of the responses, some of which were quite lengthy and some sent to the regulator after the closing date. Ofcom has taken account of all the comments received in response to the consultation.
103. Insofar as some respondents objected to Ofcom's overall approach to the DRL process, and in particular to linking the issue of DRLs with the introduction of DSO-related conditions, these issues have been addressed in section 1 of this document. One respondent suggested that Ofcom's PSB review should be completed before the deadline for acceptance of DRLs. This will not be possible within the statutory timetable for issue of DRLs. Ofcom believes however that recipients of DRL offers have sufficient and reasonable knowledge of Ofcom's intentions concerning the outcome of the PSB review to make a fair decision about whether to accept a DRL. All holders of DRLs will have an opportunity to make an application as from 31 December 2004 to have their financial terms reviewed, if they have chosen to vary their current licence accordingly. Ofcom has made clear that it will take into account in valuing DRLs any material information available up to the date of determination of new terms, and this includes any change to PSB obligations. The outcome of Ofcom's PSB review will be published before the date of determination of any applications for review made on 31 December.
104. If a current Channel 3 licensee, Channel 5 or Public Teletext refuses the DRL offered, its existing licence will automatically cease to have effect from a date to be determined by Ofcom. This must be set out in the offer document (section 215(8)(f)), and be within 18 months of the date the offer of the DRL closes (section 215(8)(c) and 215(9)(d)). The respondents who commented on this issue expressed a preference for a single date for all licensees and the maximum period permitted by the Act i.e. eighteen months instead of the twelve proposed by Ofcom.
105. Ofcom agrees that setting a single date is preferable for reasons of consistency and certainty. In setting an appropriate date when a current license should cease, the regulator aims to balance the aim of relicensing the relevant service in the minimum time against the requirement for an orderly process in so doing. Ofcom considers twelve months after closing of the DRL offer is the appropriate date and it will be included in all DRL offers.

106. Issues raised by particular respondents relating to individual licences will be dealt with by Ofcom as appropriate and necessary in correspondence with the licensees concerned.

### **Ofcom's decisions on process and timetable**

107. The offer of the DRLs shall remain open for two weeks until 5.00pm on Monday, 13 December 2004. In Ofcom's view this allows Channel 3 licensees and 5 and Public Teletext sufficient time to consider the offer made to them, seek any necessary clarification from Ofcom and notify us of their response, but will not compromise the requirement to issue DRLs by the end of the year. The Act only allows the licensee to accept or reject the terms offered. It will not be possible for example for a licensee to make his acceptance subject to the fulfilment of certain conditions or amendment of terms. A summary of administrative details for licensees concerning their response to the DRL offers are set out in section 11. Licensees should note that a failure to notify Ofcom of acceptance on a DRL offer by 5pm on 13 December 2004 in accordance with section 11 will be deemed by Ofcom to be a rejection of the offer. The current analogue licence to which such DRL offer relates will in these circumstances cease to have effect as from a date twelve months after closing of the offer i.e. 5.00pm on 13 December 2005 (see section 215(11)).
108. Channel 4 will be sent a revised draft of its DRL at the same time as DRL offers are made to Channels 3 and 5 and Public Teletext. The final deadline for any comments by Channel 4 will be the same as the closing of the DRL offers ie 5.00pm on Monday, 13 December 2004.
109. All DRLs will then be issued to licensees during the period between 14 and 23 December 2004 inclusive. They shall take effect as from 28 December 2004, which will also be the commencement date for section 231(1).
110. Together with their DRL offer, Ofcom will send all Channel 3 licensees, Channel 5 and Public Teletext a form of consent to vary their existing licence. When completed and signed, this will allow them to accept Ofcom's separate offer to bring forward the end date of their current licence in order to have the option of an earlier determination of their financial terms as from 31 December 2004. The deadline for accepting this offer of variation by consent is the same as for the DRL offer itself ie 5.00pm on Monday, 13 December 2004. The relevant analogue licence must be varied before grant of the replacement licence, because it is by reference to the end date of the current licence that the period when the DRL licensee may lodge an application for a review of financial terms is calculated (section 225(2)(a) and 225(7)). For the avoidance of doubt, no holder of a current analogue licence has a right to apply for a redetermination of financial terms under section 225.

## Section 9

# Regulatory impact assessment

111. This section discusses the issues raised by respondents in relation to the Regulatory Impact Assessment (“RIA”) published with the DRL consultation. We asked stakeholders to respond to six questions relating to the RIA. These questions were published in the consultation document as follows:
- Question 15: Ofcom has considered the costs and benefits of different dates for completing digital switchover. Is a date for completion of 2012 appropriate?
  - Question 16: Ofcom has considered the advantages and disadvantages of three options relating to roll-out of DTT. Are there other, more appropriate but practical, coverage options which would allow the statutory requirements to be fulfilled?
  - Question 17: Ofcom’s initial view is that, on balance, consumers’ interests are best served if DTT is provided through 1154 transmitters. Is this level of DTT coverage appropriate?
  - Question 18: the RIA sets out the view that it is appropriate to include a condition in the DRLs which oblige broadcasters to inform viewers about switchover. Do respondents agree?
  - Question 19: the RIA concludes that licensed broadcasters should be required to co-operate with the body given responsibility for implementing switchover (commonly known as SwitchCo). Do respondents agree?
  - Question 20: The RIA also suggests that it would be appropriate for the DRLs to contain a duty upon licensees to provide an annual report to Ofcom on the measures undertaken by the licensee in relation to switchover and on the licensee’s plans in the year ahead. Do respondents agree?
112. As well as replying to these specific questions, respondents to the consultation also raised a number of other issues and these issues are also discussed in this section.

## Specific date for switchover

113. The draft DRLs included a date of 2012 as the backstop date for switchover. The RIA discussed a number of different options for the switchover date and concluded that 2012 achieved the best balance between realising the benefits of early switchover and the costs and risks. There was support for this proposal from a number of respondents. Some, however, suggested that the risks associated with a switchover date of 2012 rather than 2015 were greater than were recognised in the RIA. Section 6 of this document considers in more detail responses made in relation to the question of the risks of an early switchover and Ofcom’s proposals for mitigating these risks to the extent that it is able to do so.

114. In proposing a date for DSO of 2012 we took into account the practicalities involved and recognised that there would be risks associated with achieving switchover by this date. These risks are likely to be lower than if we decided on a switchover date of 2010 and we believe that a number of the risks can be mitigated through effective planning and by beginning the necessary engineering work as soon as practicable. Effective co-ordination will also help to mitigate the risks and the establishment of a co-coordinating body in the form of SwitchCo should help to ensure that this happens.
115. On balance, therefore, Ofcom remains of the view that the benefits of switchover taking place by the end of 2012 justify the risks involved and that a date for switchover of the end of 2012 represents the best balance between securing the benefits of early switchover and mitigating the risks involved. As discussed in section 6, however, this date will be subject to later possible variation as a result of a decision of Government, or agreement between Ofcom and the licensee.

### **Inclusion of a switchover date in DRLs**

116. One respondent suggested that the RIA should have considered the option of not including a date for switchover in the DRLs. The consultation document discussed the advantages of including a switchover date in the DRLs as opposed to not setting a date. A number of reasons were given for including a date for switchover in the DRLs.
117. Firstly, switchover has significant benefits for the UK. As we said in paragraph 123 of the consultation document, the Government's cost-benefit analysis<sup>16</sup> estimated the net benefits of switchover to be in the range of £1.5 billion to £2 billion. Secondly, as explained in Ofcom's report, *Driving Digital Switchover*<sup>17</sup>, (see paragraphs 124 to 126 of the DRL consultation), switchover will not happen of its own accord. Consequently, one of the specific recommendations included in Ofcom's switchover report was that there needed to be greater certainty over the timing of switchover and as we noted in paragraphs 141 to 143 of the DRL consultation, "without a firm timetable set out in the DRLs, Ofcom considers that the commercial broadcasters may not have sufficiently strong incentives to turn off their analogue signal and thereby allow the achievement of switchover."
118. Ofcom continues to consider that these reasons for including a date for DSO in the DRLs remain valid.

### **Costs to broadcasters**

119. A number of respondents expressed disappointment that the RIA (and particularly the Government's cost-benefit analysis<sup>18</sup>) did not take account of the negative consequences of switchover for the commercial public service broadcasters in terms of lost analogue advertising revenue. One respondent suggested that this should be taken into account in deciding the financial terms for the licences and the public service broadcasting obligations. The respondent added that switchover should be delayed until 2015 when the term of the digital replacement licences will be completed.

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<sup>16</sup> Cost benefit analysis (CBA) of digital switchover, DTI and DCMS, September 2003

<sup>17</sup> *Driving Digital Switchover*, Ofcom, 2004

<sup>18</sup> Cost benefit analysis (CBA) of digital switchover, DTI and DCMS, September 2003



120. Ofcom considers that the potential loss of advertising revenue by commercial broadcasters is not a cost that should have been taken into account in the RIA. This is because the advertising revenue lost by the existing analogue broadcasters as a result of switchover is likely to be displaced rather than reduced as a result of switchover, i.e. advertisers may use alternative platforms and channels. In addition, the effects of switchover on Channel 3 licensees, Channel 5 and Public Teletext will be taken into account in determination of their financial terms.
121. The loss of advertising revenues by commercial PSBs is relevant, however, to the extent that it may jeopardise the ability of commercial broadcasters to fund public service broadcasting output. Ofcom has recognised in its review<sup>19</sup> of public service TV broadcasting that the expansion in multi-channel TV, which will be accelerated by switchover, is likely to lead to pressures on commercial public service broadcasting. But the review also makes proposals for mitigating these negative effects. Hence, Ofcom does not consider that a possible decline in public service broadcasting should be considered as part of the RIA.

### Extent of DTT rollout

122. In the RIA, Ofcom set out its view that it was important for the interests of consumers and citizens to ensure that households which currently receive analogue TV should be able to continue receiving TV after switchover. In relation to DTT rollout, the question considered in the RIA was the appropriate mix between DTT and other digital platforms. Specifically, the RIA considered the extent to which DTT should be extended beyond the 80 transmitters from which it is currently transmitted.
123. The RIA considered three options for the extent of DTT rollout. These were as follows:
- Option 1 which involved allowing broadcasters to decide the level of DTT rollout within the terms of their licence obligations, relying on other digital platforms for the remaining households.
  - Option 2 would involve Ofcom deciding the level of DTT rollout taking into account the costs involved for consumers and producers.
  - Option 3 would involve using all 1154 analogue transmission sites for DTT. This would be implemented by Ofcom specifying the extent of DTT rollout in broadcasters' DRLs.
124. The initial conclusion of the RIA was that Option 3 was preferable to the other options for a number of reasons:
- Nationwide DTT rollout will help ensure that those households unable to install cable, satellite or DSL do not lose TV coverage altogether after switchover.

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<sup>19</sup> Meeting the Digital Challenge, Ofcom, 2004

- It is cheaper for consumers to purchase DTT receiving equipment than use other digital TV platforms; hence, full DTT rollout makes it more likely that digital TV is affordable for all.
  - Full DTT rollout allows greater equity in the impact of switchover on consumers because it is more likely to ensure that all households face similar costs in converting to digital TV.
  - Full DTT rollout allows all consumers to choose DTT if they so wish, and thereby furthers the interests of consumers in respect of choice, price, quality of service and value for money.
  - Nationwide DTT coverage makes it easier to provide information to consumers on converting to digital TV.
125. A number of respondents supported roll-out of DTT to 1154 sites on the basis that this was the only way of achieving coverage broadly comparable to existing analogue coverage. They argued that nationwide rollout would not disadvantage particular groups, would provide more choice for consumers and would reduce the cost for consumers of digital TV adoption, particularly in relation to non-primary TV sets. Respondents also said that alternative digital TV platforms tend to have coverage limitations, whilst broadcasters would choose which sites to upgrade on the basis of an incomplete assessment of the costs and benefits. One respondent argued that roll-out to fewer than 1154 sites would involve a time-consuming assessment on a site-by-site basis. This, it was argued, would be complex and involve a re-planning of the network as well as increasing the overall level of risks involved. A point made by a number of respondents was that a disadvantage of relying on platforms other than DTT would be that significantly more sophisticated communication would be needed and there would be scope for additional consumer confusion.
126. Some respondents, however, disagreed with the proposal to mandate the full rollout of DTT. The specific points made by some respondents are discussed in more detail below.

### **Availability of other platforms**

127. Some respondents said provision could be made for universal availability of TV via more limited DTT coverage and satellite infill. They argued that public service broadcasters should be allowed more flexibility about the transmitters they broadcast from and the transmission mode and power levels used. They suggested considering how to address any shortfall in coverage at the point of switchover. A respondent also sought greater flexibility with regard to the roll-out of DTT transmitters and said that roll-out of other platforms should not be disregarded.
128. The evidence available to Ofcom continues to indicate that, affordability considerations aside, there are impediments to viewers receiving TV via alternative means of delivery. It was suggested by one respondent that our approach should have been more forward-looking, taking into account the possibility that some of the impediments we identified in the RIA may be eliminated in the future. In the RIA we acknowledged that some of the obstacles to satellite dish installation may be eliminated before switchover

(see paragraph 202); indeed, Ofcom has been working to accelerate the easing of these impediments. However, as we pointed out in the RIA, there is no certainty either that these changes will happen or, if they do, whether they will be sufficient to ensure all households potentially without DTT coverage under options 1 or 2 are able to install satellite dishes. We noted that this was particularly the case in relation to private agreements, such as those contained in tenancy agreements, which prevent the installation of satellite dishes.

129. We consider that the figures given in the RIA for availability of alternative platforms remain reasonable estimates. In relation to satellite coverage, the RIA said that between 2 and 4 per cent of households may be affected by lack of a line-of-sight to the relevant satellite (paragraph 176). This information was derived from ITC research, which key stakeholders were involved in commissioning, and is the only information currently available to Ofcom. More generally, the RIA acknowledged that information on the level of satellite coverage in practice was limited both by geographical and planning restrictions and attempted to derive a figure for the level of satellite coverage based on the evidence available to Ofcom at the time, including relevant consumer research.
130. Ofcom continues to consider that reliance upon TV platforms other than DTT is likely to lead to a situation where a small, but significant, number of households are deprived of any TV coverage after switchover. This would have severe negative consequences for the consumers and citizens who would lose access to TV as a result. More generally, the reduced coverage of DTT would create significant additional uncertainty for a larger number of households as they sought to establish which (if any) digital TV platforms were available to them. Ofcom considers that these considerations point strongly towards ensuring that DTT coverage extends to all existing analogue transmitters.

### **Equity and affordability**

131. It was recognised by a number of respondents that full DTT rollout had advantages in terms of ensuring affordability of TV after switchover. But one respondent argued that we should consider whether those benefits could be achieved via other means that would be less costly to the economy overall. For example, targeted assistance schemes which defrayed the extra costs involved in using TV platforms other than DTT could be used to ensure that TV is affordable after switchover in areas where DTT coverage is not available.
132. The RIA discussed the possibility that financial assistance schemes could be initiated (see paragraph 198). Our view remains that such schemes might address obstacles to affordability to some extent, but that they would almost certainly be complex to define, and could involve significant operating costs. We consider that the practical difficulties would be formidable. In particular, in order to minimise deadweight costs, it would be necessary to ensure that this type of intervention was available only to households without DTT coverage of sufficient quality, and only to households without pre-existing satellite and cable services. The targeted assistance would also need to be limited to the extra costs incurred in receiving satellite or cable compared to DTT. It would also be necessary for the schemes to be targeted on households in the lower

income deciles in order to reduce deadweight costs and achieve the objective of ensuring affordability. In order to protect consumer and citizen interests, it may also be necessary to ensure that households that, as a result of reduced DTT coverage, were reliant on cable and satellite could be assured that these services would continue to be available indefinitely on an affordable basis. This might require additional regulatory intervention.

133. One respondent argued that there was no need to use option 3 to ensure similar levels of prices for digital TV in DTT-areas as non-DTT areas, adding that prices of other products also differed across the country. Ofcom considers that equity is an important consideration in the case of DSO (which is a change imposed upon consumers), and that the interests of consumers are best served if we avoid a situation whereby those living in non-DTT areas face higher costs at switchover than the rest of the UK due to factors largely outside their control. In this context, it is important to remember the range of attitudes and concerns expressed by members of the public towards switchover<sup>20</sup>. Public support for switchover may be undermined if the process of digital TV adoption is regarded as being inequitable or unfair.
134. In light of all these considerations, Ofcom continues to consider that considerations of equity and affordability point towards requiring DTT coverage to be extended to all existing analogue transmitters. Alternative mechanisms for ensuring equity and affordability would either be impractical, or would involve complex interventions that are likely to make the achievement of DSO more uncertain and costly.

### Costs of different options

135. One respondent argued that commercial broadcasters could not be expected to roll-out DTT to beyond 200 transmitter sites since to do so would be commercially unviable. Another respondent argued that the costs of option 3 were such that it was not the most cost-efficient option available and that other options were therefore preferable. The respondent's analysis suggested that it would only be efficient, in cost terms, to convert a maximum of 500 transmitters to DTT and that remaining households should rely on other digital platforms instead. In particular, the respondent pointed out that many households in current non-DTT areas will already have converted to other digital platforms before switchover, thereby increasing the cost per household of converting a transmitter to DTT. It was also suggested that the costs of DTT transmission would be higher than those outlined in the RIA.
136. In relation to this point, it is important to bear in mind that, as the original RIA made clear, Ofcom has considered the overall advantages and disadvantages of the different options for DTT rollout rather than focusing solely on what would be the most efficient approach in terms of cost. We did not justify our decision to require the roll-out of DTT to 1154 transmitters on the basis that it would be the least-cost option for all sites. As we said in the RIA (paragraph 185), in considering the appropriate mix between DTT and other TV platforms, Ofcom has taken into account all of its relevant duties, with particular importance being given to the following factors:

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<sup>20</sup> See Attitudes to digital switchover, Department of Trade and Industry, 2004

- The extent to which different TV platforms are affordable for all consumers.
  - Issues of equity and the distribution of costs and benefits.
  - The extent to which different TV platforms are available to consumers.
  - Any implications for the process of implementing switchover, including the provision of information on switchover.
  - The costs involved in deploying different TV platforms.
137. It was because Ofcom took into account all of these issues, rather than simply the directly observable costs involved, that we concluded in the RIA that that the costs involved in rolling out DTT to all existing analogue transmitters are justified by the benefits which would result. Ofcom continues to consider that all of these issues are relevant in considering the issue of DTT rollout.
138. A respondent argued that the figures given for the costs of the different options set out in the RIA were not fully accurate. In the discussion of option 2 in the RIA we outlined how the costs of converting a transmitter to DTT could be compared with the costs of providing the households served by that transmitter with TV through an alternative platform (see paragraphs 205 to 210). This was illustrated by making assumptions about the costs that would be incurred by households and broadcasters, although we recognised that different assumptions could be made.
139. To illustrate how the costs of using alternative TV platforms depends closely on the assumptions made, consider the issue of non-primary sets. Most households will not have converted their secondary sets to digital before switchover (see Ofcom's report, *Driving Digital Switchover*). As discussed in the RIA, converting both primary and secondary sets using DTT is significantly cheaper than using other digital TV platforms. Taking into account these costs means that the extra costs involved in deploying DTT are significantly reduced. We also identified, but did not quantify, factors that would add to the cost of the digital satellite platform, for example, the cost of periodically replacing the viewing cards necessary to receive satellite broadcasts. Other costs which could be taken into account include the costs of decommissioning existing transmission sites. One respondent noted that if current analogue sites are not converted to DTT, they will need to be decommissioned and that the costs of this could be larger than the cost of converting the transmitter to DTT. Adjusting other assumptions, meanwhile, could lower the prospective benefits of DTT. For example, the more households which are assumed to be using cable, satellite or DSL services at switchover, the lower the consumer and citizen benefits resulting from an extension of DTT coverage.
140. Ofcom has considered the possible impact of these additional issues. Although the analysis depends closely on the assumptions made, and while considerable uncertainties about some costs remain, Ofcom considers that its approach to the consideration of the different rollout options was appropriate and robust.

141. Having carefully addressed the respective costs of both DTT and other digital platforms and reviewed this analysis in the light of responses received, Ofcom remains satisfied that if there is a net economic cost associated with full DTT roll-out, this cost is significantly outweighed by the range of benefits (discussed in detail above) which would result from extending DTT transmission to all existing analogue sites.

### **Alternatives to full DTT roll-out**

142. A respondent suggested that rather than embarking upon full DTT roll-out, Ofcom should instead conduct a detailed examination of the costs and benefits of converting each transmitter, on a case-by-case basis. Such an examination, it was suggested, would involve considering whether other alternative TV platforms were available to consumers in the area served by a particular transmitter and, if so, whether it was cheaper to use those platforms to serve those consumers rather than using DTT. In order to address possible concerns over affordability it was suggested that each area be examined in detail for the prevalence of low-income households. If affordability concerns existed, it was suggested that the least-cost means be used to address these concerns, which could involve, for example, subsidising the cost of other digital TV platforms rather than converting the transmitter to DTT.
143. This type of analysis would have a number of difficulties associated with it. In order to do it properly, it would be necessary to consider each household in a locality separately to see whether digital TV was both available and affordable after switchover. An exercise of this nature is likely to be time-consuming - as acknowledged by the respondent. It would therefore lead to a significant delay in implementing switchover: without early resolution of the issue of the number of transmitter sites, it is not possible for broadcasters and transmission companies to commence the process of upgrades. The suggested process outlined above would thereby lose the economic benefits arising from early switchover. Furthermore, although this type of analysis may be able to address concerns about availability, it would not address some of the other potential problems which arose from limited DTT roll-out. For example, it would make it more difficult to provide clear information to all households about how to continue receiving TV after switchover, and concerns about equity would also continue to exist.
144. Consequently, Ofcom is satisfied that the conclusions reached in the RIA remain valid, not only because of the delay associated with this alternative analysis but also because full DTT roll-out has a number of additional advantages which Ofcom considers to be proportional to the costs involved.

### **Transmission mode**

145. A respondent pointed out that the benefits set out for full DTT roll-out would be reduced if broadcasters did not adopt the 16QAM transmission mode. Ofcom is still discussing with broadcasters whether current analogue coverage levels can be achieved using alternatives to the 16QAM transmission mode (e.g. using the 64QAM mode combined with higher power levels). No decision has yet been taken on which transmission modes and power levels should be used by multiplex operators (see paragraphs 232 to 234 of the RIA). We will be consulting stakeholders shortly on the issue of the transmission mode and power levels that should be used after switchover (see section 2).

### **Flexibility about extent of DTT roll-out**

146. A number of respondents, suggested there should be flexibility to enable build-out of DTT to less than 1154 transmitters if this would result in equivalent coverage. We note the concern expressed by a number of respondents that rollout to exactly 1154 transmitters might not be necessary. But, as other respondents pointed out, achieving equivalent coverage via less than 1154 sites would add complication and carry costs. However, as discussed in section 2, we will seek to be flexible about the need to upgrade to exactly 1154 transmitters providing that the achieved coverage levels are satisfactory.

### **Information provision**

147. It was suggested by one respondent that information about availability of digital services could be provided via the internet, thus negating the argument that rolling out DTT to 1154 transmitters would enable clearer information to be provided to viewers. We do not accept that it would be feasible to address the need for clear information via the internet. Although it would be possible to provide differentiated information in this way, it is likely that by the time of switchover a large proportion of households will still be without internet access. Also, as we said in the RIA (paragraph 237), an important means of providing information is through the medium of TV.

### **Coverage and timing issues**

148. One respondent suggested that the issues of coverage and the date of switchover are inter-related and should have been considered simultaneously. The link between coverage and the timing of switchover was recognised in our RIA (for example, see paragraph 220) and in considering the different roll-out options (see the table on page 53 of the DRL consultation) we considered the risk of delay attached to each option.

### **Scope of the RIA**

149. One respondent argued that the RIA should include more evidence, in particular, the respondent argued that there should be more quantification of the costs and benefits of the different DTT roll-out options.
150. It is important to note that in reaching its conclusions Ofcom took into account all of its relevant duties. We considered, therefore, issues such as affordability and equity as well as other issues such as costs of DTT roll-out, which are easier to quantify. This approach led Ofcom to a reasoned analysis using the relevant evidence which was available to it and which we considered useful in order to provide an accurate assessment of the options considered.
151. Ofcom considers that the benefits of the full DTT rollout, in terms of equity, ease of information provision, affordability and ensuring availability of TV after switchover, are difficult to quantify precisely despite being readily identifiable. In addition, Ofcom considers that under the terms of the Communications Act it has a degree of discretion about the scope of the RIA and considers that it has exercised this discretion reasonably. In particular, Ofcom considers that the RIA clearly set out its reasons for the decision to roll-out fully DTT.
152. A respondent also argued that the proposals set out in the consultation document were pre-determined. As mentioned in the consultation document (paragraphs 30 and 31), Ofcom conducted discussions with broadcasters

during 2004 on the proposed switchover conditions, including the extent of DTT rollout. The pursuit of these discussions did not, however, imply that the outcome of this consultation was in any way pre-determined. Ofcom has conducted a wide-ranging consultation on the terms of the DRLs, and has received a significant number of responses. These have been carefully evaluated and assessed before reaching the decisions set out in this policy statement.

### **Information for viewers**

153. A number of respondents expressed concerns about the conditions relating to information provision. In particular, there were concerns that the conditions were not tightly defined. These concerns, and Ofcom's response to them are discussed in more detail in section 5. Nevertheless, we continue to consider that holders of DRLs should be obliged to provide information about switchover to viewers. Although some costs will be incurred by the broadcasters, we remain of the view that the benefits will be proportionate to the costs, particularly in view of the fact that the costs will be transitional.

### **Co-operation with SwitchCo**

154. Some respondents said it was inappropriate to require co-operation with SwitchCo before it had been constituted or its role had been determined and expressed concern about the open-ended nature of the proposed obligation. These concerns have been reflected in the revised condition (discussed in greater detail in section 3).
155. Although we have noted respondents' concerns about the nature of the proposed commitment, and have made appropriate amendments to the licence condition, Ofcom continues to consider that the benefits of co-operation, in terms of minimising the risks of inadequate co-ordination, are likely to be significant. As a consequence, we do not believe the costs of this licence requirement will be disproportionate.

### **Provision of information to Ofcom**

156. Section 4 discusses responses to the proposals on information provision. Ofcom has noted the concerns about what might be required to be included in the report and the danger of requests for information being duplicated. However, in the RIA (see paragraph 241) we made clear that the report would be expected to cover, "the measures taken by the licensee in relation to switchover and on the plans of the licensee in relation to switchover in the forthcoming year", with the information being needed, "to ensure that licensees had undertaken steps towards achieving the switchover date." We acknowledged that costs would be incurred in compiling these reports, but reporting on an annual basis should minimise costs.

### **Conclusion**

157. Having considered the responses made by respondents Ofcom considers that the conclusions set out in the RIA remain valid. As set out in earlier sections, we have revisited our original analysis and some of the DSO-conditions have been modified to take into account the comments made by respondents. But Ofcom continues to consider that it is reasonable and proportionate to include these conditions in the DRLs.



158. In relation to the rollout of DTT, Ofcom continues to consider that full DTT roll-out is the most preferable solution for the following reasons (outlined in greater detail in the RIA):
- Full DTT roll-out makes it easier to provide information to consumers on how they can convert to digital TV in the run-up to switchover, thereby greatly easing the communications problems involved with switchover.
  - DTT is likely to be more affordable for consumers than other TV platforms. Some digital TV platforms, such as cable and DSL, are currently only available in the form of pay TV, and thereby would involve on-going costs for consumers. Non-subscription digital satellite equipment, meanwhile, costs more for consumers than DTT-reception equipment, particularly when secondary and other sets are considered.
  - Full DTT roll-out is a more equitable solution because it is more likely to ensure that households across the UK face similar costs in converting to digital TV.
  - Extended DTT availability will help ensure that those households unable to install or receive other TV platforms (such as digital satellite) are not entirely deprived of TV coverage after switchover.
  - Greater availability of DTT allows more consumers to choose between different digital TV platforms, and thereby furthers the interests of consumers in respect of choice, price, quality of service and value for money.
159. Ofcom considers that if there is a net economic cost resulting from full DTT rollout, this cost is significantly outweighed by the resulting benefits. We also note the support expressed by a number of respondents for the proposals to roll-out DTT to all existing analogue transmission sites as the best means of ensuring a successful switchover process in the UK. We have also taken due account of the views of Ofcom's independent Consumer Panel which in its recent report<sup>21</sup> to the Secretary of State recommended that "the widest possible roll-out of DTT should take place in order to ensure that the largest number of households across the UK have a choice of digital television platforms and access to a low-cost option for digital television".

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<sup>21</sup> Supporting the most vulnerable consumers through digital switchover, Ofcom Consumer Panel, 2004

## Section 10

# Other issues

### Issues specific to particular licences

160. Several licence-specific issues were raised by licensees in relation to various content issues and the application of the Tier 2 quotas (relating to original production, regional production and programming and regional news programming) which have been brought forward from existing analogue licences and are contained in Part 1 of the Annex to each of the DRLs.
161. Many of these relate to on-going discussions with licensees in the light of the Phase 2 PSB report. Where appropriate, these comments have been reflected in the revised DRLs. However overall, Ofcom believes that existing arrangements should remain in place pending the final outcome of Phase 2 at which stage the DRLs will be varied to reflect the new arrangements that are agreed with broadcasters.
162. Ofcom has written separately to individual broadcasters on a confidential basis in response to each of these licence-specific issues.
163. Ofcom notes the comments raised by the Gaelic Media Service about current pressures to reduce further the schedule slots available to Gaelic programming in peak-time and late evening in Grampian and Scottish regions and notes the suggestion that provision for Gaelic within the DRLs could be reviewed in the fullness of time in light of any outcome of the consideration as to how best to deliver a Gaelic service in the current PSB review.
164. With respect to the Channel Islands, Ofcom recognises that duties and obligations within the two Bailiwicks are not a carbon copy of those under the Communications Act and has made appropriate amendments to Channel TV's licence to ensure it reflects only those parts of the Communications Act that were extended to the Channel Islands.

### Timing of financial reviews

165. Ofcom expects to complete any financial reviews applied for on 31 December 2004 by the end of June 2005. Such reviews must of course comply with any applicable state aids rules.

## Section 11

# Summary of administrative details

166. The main body of the offer document will consist of the final version of the DRL and will be accompanied by a short covering letter. Separately, a notice of variation to the existing analogue licences will be prepared for licensees to complete, if they wish, by inserting the date they wish the end of the licence period to be brought forward to.
167. DRL offer documents are being sent to Channel 3 licensees, Channel 5 and Public Teletext today, Monday, 29 November, together with a draft notice of variation to elect to change the licence period of their current analogue licence.
168. Channel 4 is being sent a revised draft of its DRL today, Monday 29 November.
169. The closing date for acceptance of the DRL offers and for Channel 4 to submit any final comments to Ofcom on its DRL is by 5pm on Monday, 13 December 2004.
170. Channel 3 licensees, Channel 5 and Public Teletext should post or fax the completed acceptance form and notice of variation to the address below. Acceptances and/or notices of variation will not be deemed valid if sent by e-mail.

Erika Forsberg  
Television Broadcast Licensing  
Competition and Markets  
Ofcom  
Riverside House  
2A Southwark Bridge Road  
London SE1 9HA

Tel: 020 7981 3885

Fax: 020 7983 4303

Channel 4 is requested to submit any final comments to  
**mark.collini@ofcom.org.uk**

Note that Ofcom will not routinely acknowledge receipt of responses.

All DRLs will take effect from Tuesday, 28 December 2004.

## Further information

171. If you have any questions about the issues raised in this statement, or if you need advice on submitting your response, please contact Trevor Barnes on 020 7783 4675 (**trevor.barnes@ofcom.org.uk**) or Mark Collini on 020 7783 4941 (**mark.collini@ofcom.org.uk**).