

*"Working for quality
and diversity in
British broadcasting"*

Founded by Jocelyn Hay in 1983

1204:08



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Ofcom's Second Public Service Broadcasting Review - Phase One: The Digital Opportunity

Response from Voice of the Listener & Viewer

June 2008

Voice of the Listener & Viewer Ltd. A private company limited by guarantee registered in England No. 4407712.
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Voice of the Listener & Viewer

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Executive Summary

- i. VLV welcomes the review and in particular its stress on the viewer as ‘citizen’ as well as a ‘consumer’. Our response is based on a wide range of views, from our board and trustees, our members and a wider academic network, all of whom have been consulted, and many of whom have responded.
- ii. VLV welcomes Ofcom’s finding that viewers attach a high value to current PSB content, that their primary concern is with the quality of the content (not the means of delivery) and that there is a continuing desire for UK-produced content.
- iii. Whilst believing that PSB content will remain at the centre of UK viewing VLV accepts the need for a future framework which recognises that viewing habits have changed, are changing and will continue to change and the same goes for the platforms where that viewing will take place.
- iv. However, these changes are unlikely, in themselves, to improve significantly the available range of UK programme content, as opposed to non-UK programme content, principally from North America.
- v. We believe that it is highly likely that the majority of British viewers will continue to see a securely-funded BBC as the primary site of their television viewing.
- vi. VLV believes that in the short term, Ofcom should devise and develop a transmission and distribution policy for commercially-funded public service broadcasters which can be implemented in 2014 when the current commercial broadcasting licences expire.
- vii. In the longer term we believe there will be a requirement for the provision of additional public funds, or a change in the balance of incentives afforded to commercially-funded public service broadcasters, to maintain a pluralistic and effective commercially-funded PSB sector
- viii. VLV believes that the BBC will remain the cornerstone of PSB in the UK but that changes may be required in the regulatory environment to take into account the post-DSO ecology, within which the commercially-funded PSBs operate.

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- ix. VLV is firmly opposed to any notion of ‘top-slicing’ the BBC television licence which we believe would be directly harmful to the BBC, indirectly harmful to the commercially-funded PSBs and deleterious to the entire UK broadcasting environment.
- x. In terms of the four illustrative models put forward by Ofcom VLV’s overall position is that we are opposed to Models 2 and 4 and believe that the right way forward would be a combination of Model 1 (Evolution) and Model 3 (BBC and C4 + limited competitive funding).
- xi. VLV believes that Ofcom’s assumption that a new Communications Act could be on the statute book by 2011 is highly optimistic, given a likely General Election in 2010 and the necessary consultative and legislative stages required.
- xii. VLV has particular concerns about the current state, and future prospects, for both BBC and commercial PSB in Scotland, Wales and Northern Ireland. We would urge that Ofcom take full cognisance of the reports of the Scottish Broadcasting Commission which is due to report in September 2008 and of the Culture Committee of the Welsh Assembly and similar such inputs from the Northern Ireland Assembly.
- xiii. VLV has had a long-standing concern about the provision of children’s programming and welcomes Ofcom’s recognition that the market is unable to provide public service programming for children and that there is a need for intervention by Ofcom. We would hope to see Channel 4 not limiting its children’s output to the older group and would suggest that consideration be given to the possibility of S4C providing children’s programmes (re-versioned) for audiences beyond the Principality.
- xiv. VLV regrets the absence of any consideration of the implications for radio of its review of public service broadcasting and urges Ofcom to ensure that this is considered in its second report.
- xv. We conclude by reiterating our support for the notion of public service broadcasting being an integral part of commercial broadcasting in the UK and assert our belief that the guiding principles for audiences, and hence for Ofcom, remain universality, choice and value for money – none of these values are at odds with the commercial imperatives that must inform ITV, Channel 4 and Five.

1. Introduction

1.1 This response to the Ofcom Public Service Broadcasting Review is from Voice of the Listener and Viewer (VLV) - an independent, membership association, free from political, commercial and sectarian affiliations, working for quality and diversity in British broadcasting. This response includes the views, not just of the VLV as such, but has also benefited from inputs from some of the leading academic authorities in the area of broadcasting, including Vincent Porter, Patrick Barwise, Sonia Livingstone, Georgina Born, Steven Barnett and Ivor Gaber. It also includes contributions from academics who have participated in an e-group discussion hosted by the Broadcasting Policy Network of the Media, Communication and Cultural Studies Association, the organisation which links all UK academic researchers working in this area.

1.2.1 VLV welcomes Ofcom's timely and considered review of the current state and future development of public service broadcasting in the UK. Given that Ofcom's principal statutory duty is to place citizens at the heart of its work, we welcome the emphasis placed in this report on the behaviour and the needs of audiences. In an attempt to be helpful, our response follows the structure of the Executive Summary of Ofcom's consultation paper.

2. Sections 1.1 – 1.8 - The Continued & Dominant Role of Public Service Broadcasting

2.1 VLV endorses Ofcom's recognition that, despite the changes which have taken place in public service broadcasting between 2003 and 2008, "audiences attach a high value to content that reflects the UK in all its facets, which they see as essential to maintaining our cultural identity and social cohesion." (s. 1.5) VLV also notes with interest that Ofcom estimates that together, central and local government are themselves spending between £115-145 million on public service content online.

3. Sections 1.9 – 1.11 - The Appearance of Gaps in Meeting Public Purposes

3.1 VLV shares the view that the main public service channels have been achieving the purposes of public service broadcasting, but that following digital take-up, enhanced channel choice has reduced their reach and impact. We note that some of the most popular digital

channels are subsidiaries of the main PSBs that broadcast content which was originally commissioned and transmitted by their parent companies. We also note that the decline in viewing public service channels is much greater among 16-24 year olds and people from ethnic minority groups. The lesson that VLV draws from these changes in viewing habits is that UK citizens continue to rely on public service broadcasting, however funded, even though some viewers have also chosen to exercise the enhanced channel choice which digitalisation and technological convergence has given them.

3.2 There are, we believe, three principal reasons why these viewers look elsewhere:

- The public service programme is also available on an alternative, or more convenient, distribution medium, such as the internet;
- The public service programme is not available at the time that they wish to watch it; or
- The programme which they prefer is unavailable on public service television.

3.2 But, as the move from analogue to digital broadcasting has also shown, the speed with which viewers move from one mode of programme reception to another varies widely from household-to-household. While some viewers are early adopters, others remain with older reception technologies, even though a change could enhance their choice of channels.

3.3 VLV therefore submits that Ofcom needs to focus clearly on two emerging structural divisions in viewers' needs when analysing the future options for commercially- funded public service broadcasting. First, that changes in the viewing habits of individual viewers are conceptually distinct from public policy choices which may limit the provision of universal service, and thus the freedom of choice for all viewers; and second that an increase in the range and variety of electronic communication channels calls for a rigorous distinction between the shortfall in the range and diversity of programmes which are available to viewers, and in the number of distribution channels by which audiences may access them.

4. Sections 1.12 – 1.20 - The Implications for Achieving Public Service Purposes in an Era of Intensifying Pace of Change

4.1 VLV's starting point when considering current and future trends in the context of achieving public service purposes, is based on the following:

- Total television viewing is almost steady, even among younger viewers
- Television advertising has reached a point of maturation but is not significantly declining
- Multichannel and digital television penetration is now approaching saturation, so the commercial PSBs' rate of loss of audience and advertising revenue share has slowed down and, we believe, will continue to do so
- The only new technology that could have a significant impact on consumer behaviour is the PVR, which changes none of the above
- The impact of all the other new technologies (on-demand TV, mobile TV, interactive TV, user-generated TV, etc) has, we believe, been enormously exaggerated in terms of audience behaviour and, especially, of revenue potential.
- We agree with Ofcom that audiences' are driven by the demand for high quality programmes, including a high proportion of UK-produced PSB programmes, rather than technology. What the new distribution platforms – multichannel, PVRs, and now catch-up TV – enable them to do is to watch the same programmes in ways that they find more convenient
- We believe that the overwhelming thrust of the evidence is that in 2020 television channels will still be the main way people find programmes, that most viewing will still be 'live', via an off-air TV screen, using the cheapest means available to the largest number of people and hence, will be heavily skewed towards the main channels

4.2 Consequently, the increased choice of electronic communication channels, such as broadband, mobile TV, and HDTV, is unlikely to improve significantly the available range of UK programme content. What may well develop instead however, is an increase in the availability, and possibly the take-up, of non-UK programme content, principally from North America and other English-language speaking parts of the world. For while the market in electronic communication distribution networks is likely to remain predominantly domestic, that in programmes is likely to become increasingly international.

4.3 We believe that it is highly likely that the overwhelming majority of British viewers will continue to look to a securely-funded BBC for the provision of most of their programmes. Whilst revenue from advertising and sponsorship is less predictable, and may call into doubt the ability of the commercially-funded public service broadcasters to fulfil all their

traditional contributions to public service broadcasting, we believe that many commentators have over-emphasised the unpredictability of TV advertising revenues. As referred to above, the rate of decline in the advertising revenues of commercially-funded public service broadcasters has begun to fall and is expected to stabilise in the very near future. In addition, public service broadcasters are, and will be, the only free-to-air broadcasters able to deliver to advertisers, audiences from all over the UK, and from all sections of society.

- 4.4 We agree with Ofcom that it is sensible to look at the future in terms of the short, medium and long-term. However, we note that whilst 2011 is when the current settlement of the BBC's Licence fee expires (as do the Corporation's responsibilities both for overseeing, and largely financing, digital switchover, and for assisting the disabled and very elderly viewers with their switchover costs) the actual due date for DSO is 2012, which might be a more appropriate junction point between the short and medium term. We also note that the BBC's Charter and Licence continues to run until the end of 2016, which might be a more appropriate dividing line between the medium and long term.
- 4, 5 VLV considers that in the short term – however so designated - Ofcom should devise and develop a transmission and distribution policy for commercially-funded public service broadcasters which can be implemented in 2014 when the current commercial broadcasting licences expire. This policy would need to ensure the long-term availability of a universal distribution network for non-BBC public service broadcasters, and to make provision for a series of national, regional and possibly local opt-outs that will be fit-for-purpose. One area worth investigating might be the provision of an additional 'third local tier' of television. This tier could be supervised by broadcasting trusts - comprised of voluntary bodies - that would oversee the transmission arrangements that would benefit regional, city-wide and local audiences.
- 4.6 VLV believes that any proposed transmission and distribution policy should consider:
- The changes, between now and 2011/2, in the advertising and programme sponsorship revenues of the commercially-funded public service broadcasters as the digital and HDTV market places mature;

- The geographical relationships between the political and administrative divisions of the UK's nations and regions, and ITV's regional distribution network, which was originally based on the locations of the BBC's transmitters during the mid-1950s.
- The roll-out, between now and 2012, of universally available broadband services by the telecommunication companies in the nations and regions of the UK, and the broadband speeds which can be guaranteed in throughout the UK
- The balance in coverage between regional television stations and local radio and (proposed) television stations
- The need, in order to achieve maximum range and impact for commercially-funded public service broadcasters, to make their programmes available on a range of platforms, and enable them to exploit the distinctive benefits of different delivery platforms
- The optimum arrangements under which Ofcom should allocate broadcasting frequencies to the commercially-funded public service broadcasters, bearing in mind that Ofcom's principal regulatory duty is to further the interests of *citizens* in relation to communication matters, and not those of either the Treasury or UK taxpayers.
- The legal measures which Ofcom will need to put in place in order to protect the transmission and distribution arrangements of the UK's two non-publicly-owned public service broadcasters (i.e. ITV and Five), should another commercial company take either of them over, or acquire a dominant shareholding in them.

5. Sections 1.21-1.33 - Funding 'Choice' in the Provision of Public Service Content in the Digital Age

5.1 VLV shares Ofcom's ambitions that the future delivery of public service content in the digital age will be driven by the ongoing needs of the audience. We too look for commercially-funded public services which will:

- Deliver high levels of UK content which meets the purposes of public service broadcasting and is universally available. We note that Ofcom now refers to 'widely available; we are concerned as to the precise meaning Ofcom now attaches to this phrase (the analogue definition was 99% of the population, we are concerned that Ofcom has retreated from this figure).

- Provide public service content which is innovative, original, challenging, engaging, and of consistently high quality (though we fear that it may be impossible to provide sufficient funding to deliver this).
- Ensure real choice for all viewers in the availability of programmes which both supplement and complement the range of the BBC's public purposes.
- Supply diverse content which meets the needs of all viewers in the UK.

5.2 We believe that this ambition will require the provision of additional public funds, or a change in the balance of incentives afforded to commercially-funded public service broadcasters. In considering this balance VLV proposes that Ofcom:

- Reviews the current terms of trade between commercially-funded public service broadcasters and independent producers, notably in the division of secondary rights
- Considers whether the value of existing public service programming can be enhanced by encouraging commercially-funded broadcasters to make current and archive content available free of charge to fellow broadcasters, for secondary use in different forms, through a variety of media. (Although we recognise the complexity of the rights and clearance issues involved in this proposal).
- Investigates whether it would be possible for commercially-funded public service broadcasters to make available to viewers new forms of public service content, which make use of, and take imaginative advantage of, the £115-145 million of public service content, which is already being made available on-line by central and local government.
- Reviews whether the commercially-funded broadcasters could improve their public service and capitalise on the wide range of other providers who are already producing an unprecedented diversity of interactive content (much of which is rich in public service characteristics) either by developing imaginative programme formats which make use of this material, or by providing signposts to enable the inexperienced viewer to access this material.

6. Sections 1.34 – 1.40 - Revising the existing model for public service broadcasting in order to respond to audience's evolving requirements

6.1 We endorse Ofcom's argument that the BBC's statutory framework, which defines its remit in terms of broad purposes rather than in terms of specific content requirements, allows it to

respond flexibly to changes in the way in which audiences access content. For this and other reasons, VLV considers that the BBC will continue to act as the cornerstone of public service broadcasting between now and 2016, at least.

- 6.2 We consider that it would be reasonable for Ofcom to consider amending the current regulatory model for commercially-funded public service broadcasting to address the changing needs of audiences. There are, however, arguments both for and against such a change. The current regulatory model enabled Ofcom, in its first review of public service television broadcasting, to identify which programme genres had benefited (and which had lost) from the switch to digital [*Ofcom review of public service television broadcasting, Phase 1 – Is television special?* (Figures 12-14 and 28)], and also the relative personal and social importance of each genre to viewers. (Figures 33 and 34). The Review also revealed that fewer members of the public considered that the commercially-funded public service channels had been as successful as the BBC in meeting their obligations and, that with the possible exception of news and other information programmes, they were also less satisfied with selected public service components than their importance warranted. (Figures 35 and 36).
- 6.3 This analysis also allowed Ofcom to identify areas of generic concern – notably in education, current affairs, regional programming, and arts, religion, children’s and minority programming. We are unaware of any evidence to show whether the situation has improved since Ofcom’s first PSB review. However, in 2005, Ofcom did promise that it would conduct a further review of public service television broadcasting in which it would consider how effectively the public service broadcasters have met the purposes of PSB. (*Ofcom review of public service television broadcasting: Phase 3 – Competition for quality*, para. 1.67, bullet point 4.) It would be valuable, in the short term at least, if Ofcom were to follow a similar analytical approach in order to provide an assessment of whether or not the commercially-funded public service broadcasters have improved, or otherwise, their effectiveness in meeting their public service purposes over the last five years.
- 6.4 At the same time, it would also be desirable for Ofcom to make a more robust case for requiring commercially-funded public service broadcasters to fulfil a number of public service values similar to those demanded of the BBC. This would enable Ofcom to evaluate:

- The degree of success which the BBC Trust has achieved in implementing a new regulatory model in relation to the BBC Executive Board
- The appropriateness of establishing similar supervisory arrangements for commercially-funded public service broadcasters, with their own boards of directors, and in the case of ITV and Five, their own shareholders.
- Whether or not to abandon its plans for moves towards co-regulation or self-regulation
- Whether to establish identical, or distinct, public purposes for commercially-funded broadcasters bearing in mind the unique obligations currently imposed on Channel 4 Television in s. 265(3) and ss. 295-297 of the 2003 Communications Act, and on S4C in s. 338 and Part 2 of Schedule 12 of the same Act.
- The most relevant key performance indicators for commercially-funded broadcasters; and, if implemented, whether the broadcasters would be liable to distort their editorial output simply in order to meet them.
- Which body would evaluate the broadcasters' degree of success, given the qualitative nature frequently involved in assessing the achievement of public purposes, and what role, if any, members of the public would play in evaluating these achievements.
- What rewards, or punishments, would be offered to those broadcasters who succeeded, or failed, to fulfil their public purposes? (In general, we consider that incentive-based regulation of public service broadcasters would work better than target-based regulation. (One possibility might be for Ofcom to offer to steadily reduce spectrum fees for those commercially-financed public service broadcasters who continued to fulfil their designated public service purposes).
- Whether any incentives, or punishments, would conform, or conflict, with the EU's rules on state aid, which are currently being reviewed by the European Commission.

6.5 Finally, in examining the existing rules for PSB programming, VLV strongly restates its belief in the vital importance of there being a plurality of national news services available on the UK's commercial TV network. Any significant diminution in the PSB requirements of ITV could place a large question mark over the continuing financial viability of ITN. This could arise either from ITN facing severe cost-competition from BSkyB in the provision of network news, or through ITV deciding that it required less network output from ITN. This in turn could threaten the viability of ITN's Channel Four News which currently (and for the foreseeable future) benefits greatly from its shared use of resources with ITN's news output

on ITV. In its role as protector of the interests of the citizen and, recognising its implicit obligation to assist in the sustaining of our democracy, VLV sees the maintenance of a plurality of commercial news providers as one of Ofcom's major responsibilities.

7. Section 141 - Four Illustrative Models for PSB

- 7.1 Central to this Report are the four illustrative models of PSB proposed by Ofcom. VLV's overall position is that, for reasons set out below, we are opposed to Models 2 and 4 and believe that the right way forward would be a combination of Model 1 (Evolution) and Model 3 (BBC and C4 + limited competitive funding).
- 7.2 So as to avoid any misunderstanding we begin with a statement of what, for VLV, is a core value i.e. that a strong, independent, well-funded BBC is essential, in order to ensure continuing large-scale provision of UK-produced free-to-air public service content which, as Ofcom notes, is what the public clearly wants. This is now even more important than in the past because of the financial pressures on the advertising-funded PSBs. The BBC can, with some justice, claim to be the best public service broadcaster in the world, offering better value for money than the commercial channels and, as the main sustainable source of UK-produced content, as well as numerous indirect benefits to the country as a whole.
- 7.3 Directly linked to this is our contention that any proposal to 'top slice' the BBC licence fee would have significant deleterious effects, not just on the BBC, but for all of UK broadcasting. The arguments against top-slicing are manifold but for VLV the most important are that:
- Top slicing breaks the critical accountability link between the BBC and the public. Because it receives the whole of the licence fee, the BBC is currently directly responsible to the public for its entire expenditure, break that link and the current consensus that accepts the principle of a universal, flat-rate 'tax' to fund the BBC is liable to crumble.
 - The strength of British broadcasting in the past, and this is not fundamentally altered by the changing media landscape, is that its strength has grown out of competition with

other broadcasters, in terms of the quality of its programming rather than competition for the same sources of funding.

- And, somewhat obviously, top-slicing inevitably means a reduction in the BBC's overall share of public funding – we have already noted the damage caused to the BBC as a result of the present licence fee arrangement, a top-sliced future would make matters significantly worse. (And despite BBC protestations to the contrary, it is almost inevitable that any such cuts would fall more heavily in the programme areas commonly identified as 'PSB', rather than in its more popular mass entertainment output.

Our specific responses to the models are as follows:

Model 1 – Evolution

7.7 This model has much to recommend it, certainly between now and 2012. By then Ofcom should have completed its review, using the genre-based methodology which it used in its first review of public service television. This would also enable it to identify which programme genres remain high public priorities, and in which genres, if any, the channels' public service responsibilities might need to be reduced.

Model 2 – BBC Only

7.8 VLV does not favour the implementation of this model, since the evidence is that viewers welcome channel choice in the delivery of public service broadcasting; the BBC also benefits from competition in programming. It is worth noting that the notion that the removal of regulatory responsibilities would lead to a radical change in programming may well be misleading, since Ofcom's first review of public service television showed that over four fifths of the public considered that it was important for terrestrial channels to provide news, a variety of informative factual programmes, and mainstream entertainment programmes, combined with a balanced diet of programmes which meet the needs of children in the UK and protect them from unsuitable content. (*Phase 1 – Is television special?* figure 31).

7.9 What is highlighted by this apparent overlap between what public service broadcasters are expected to give the public, and what the public wants, are more subtle differences around the balance and proportion of different programme genres, the size of programme budgets,

and the philosophies which underlie editorial policies. It is unclear, therefore, whether the current editorial, programming and scheduling policies of the commercially-funded public service broadcasters arise from their regulatory responsibilities or from their own commercial self-interest. In addition, Ofcom's moves towards co-regulation and self-regulation have made this distinction even less clear. It would be valuable if Ofcom could demonstrate more clearly, the tangible differences in programming policy which would be likely to emerge between Model 1 and Model 2.

Model 3 - BBC/C4 plus limited competitive funding

- 7.10 VLV considers that it is important that Channel 4 maintains its current contribution to the PSB mix in the UK. It offers viewers a real alternative public service to that provided by the BBC. Both are publicly-owned bodies but have been funded differently, one by the television licence fee and the other by revenues from advertising and programme sponsorship. Channel 4 offers viewers good value for money, its programmes are neither paid for by viewers directly (as with the BBC) but unlike ITV or Five, Channel 4 ploughs all its revenue into the business of delivering, or supporting the delivery, of programmes, no money is diverted to any shareholders in the form of dividend payments.
- 7.11 On the other hand, Channel 4's original remit was drawn up when it only faced competition from three analogue channels: BBC 1, BBC 2 and ITV. Its remit was therefore essentially based on early assumptions about 'market failure'. The Channel's programme output has changed significantly under successive chief executives. However, VLV considers that if Channel 4 is to receive public subsidy in the future, its current remit, as spelt out in s. 265(3) of the Communications Act, will need to be revised and to be made more specific, not necessarily in terms of programme genres, but in terms of its public purposes.
- 7.12 A second, and perhaps more difficult issue to resolve, would be the size and the source of the public funds which might be needed in order to subsidise Channel 4. The Channel makes the argument that, if it is to continue any sort of public service remit in a post DSO environment, it will require external funding. VLV is agnostic as to whether Channel 4 will or will not require, any future subsidy. However, should it be the case – and we are not opposed to it in principle - we would make a strong case for an in-depth examination of all

possible means of subsidising the Channel, without recourse to top-slicing the licence fee. The size of any such subsidy would, of course, depend on the particular public purpose(s) which Channel 4 was being subsidised to fulfil. In parenthesis, we note that Channel 4's turnover increased slightly between 2006 and 2007, and its staffing increased by over 3 per cent, although its 'earnings before interest and tax' (EBIT) fell by over 75 per cent. (*Media Guardian*, 26 May 2008).

7.13 As for the source of those public funds, unless Ofcom can generate the subsidy from its own funds, this decision will ultimately be taken by Parliament. However, bearing in mind that Ofcom's principal regulatory duty is to further the interests of *citizens* in communication matters, VLV considers that Ofcom should ensure that any public subsidy should come from the Treasury, rather than from the Television Licence Fee, since corporations and commercial businesses, as well as citizens, contribute to the nation's revenues and also benefit from its 'public goods' such as Channel 4.

7.14 In addition to the public purse there are a number of funding alternatives for Channel 4 that we would urge be explored – given that VLV is, as stated earlier, opposed to any top-slicing of the licence fee. Among the alternative ways of supporting Channel 4 are:

- the introduction of some form of Corporation Tax relief for the provision of public service programming (the parameters of which would have to be relatively tightly defined)
- allowing the channel access to BBC production facilities at cost price
- an incentive-based reduction of spectrum fees for the Channel and
- permitting the Channel additional advertising minutage.

7.15 These proposals will require detailed economic modelling and we look forward to seeing them worked through by Ofcom in the second half of this review. Nor should this modelling be confined to the search for appropriate mechanisms to subsidise PSB on Channel 4. Similar, but different, arguments can be made by the other commercial PSB providers for ongoing public subsidy to continue their PSB responsibilities. Clearly the tax break proposal for Channel 4 could be explored in this context for ITV and Five and limited public funding could come through selling spectrum to commercially-funded PSBs for a lower price than the telecommunication companies are willing to pay for it (e.g., through a 'shadow exchange rate').

Model 4 – Broad Competitive Funding

- 7.16 VLV is not convinced that this would be a useful manner in which to proceed. We have investigated the experience of New Zealand which has established the equivalent of an ‘Arts Council of the Air’. The problem with this funding model appears to be that the range of content it has funded has been constrained by the scheduling priorities of the broadcasters who agree to screen the content it funds. The broadcasters have often asked for funding for programmes that turn out to be high-rating and therefore commercially viable; and although there is some good material produced and broadcast, if it is not considered to be of mass-appeal, it has tended to be relegated to peripheral slots in the schedule or rejected as ‘unattractive’.
- 7.17 Other complexities have arisen, including:
- arguments over intellectual property rights, whereby producers are enabled to enjoy generous commercial gains from the sell-on of rights of programmes that have been paid for with taxpayers’ money
 - problems of evaluating whether or not a programme has extended the range of content beyond the commercial mainstream and
 - excessive bureaucratisation and complexity in the programme commissioning process.
- 7.18 Overall VLV is unconvinced by arguments for the creation of an ‘Arts Council of the Air’ as a means of government funding “for public service content beyond the BBC [to meet] public service purposes”. However, there may be a case for publicly funding certain types of electronic communication services, such as Teacher’s TV which is currently financed by the Department for Children, Schools and Families. However, we consider that it would be better if these public services were kept distinct from the debate about the provision of mainstream public service broadcasters. Whilst it is conceivable that the current commercially-funded public service broadcasters, or their corporate associates, could bid for these contracts, should this be the case then we would argue that it is important that they should be transmitted on different frequencies from their mainstream output. Moreover, any such proposal would raise, in a particularly acute form, both the value and the danger of incorporating commercial advertising within such services.

8. Section 1.42 - The Legislative Timetable

8.1 Ofcom suggests that “any new legislation should ideally be in place by 2011, the point at which some current licences may fall into deficit and Channel 4 will face increasing pressure on delivery of its remit.” However, we would argue that this timetable is perhaps inappropriate. Our view is that a full public debate over new legislation should involve (following the completion of the Ofcom Review next year) a Green Paper, followed by consultation, leading to a White Paper, followed by consultation, leading to the publication and enactment of a new communications bill. Our view is that this process requires at least three years. The last Communications Act took nearly five years to reach the statute book; one reason for the length of the process was the creation of a joint committee of both houses of Parliament, chaired by Lord Puttnam, which did an excellent job in winnowing out that which required winnowing and refining that which required refining. Would there be any arguing that such a process should not be repeated this time round? A General Election can be expected in 2010, is it realistic to believe that the government would wish to use valuable legislative time in the year of an election to debate post DSO broadcasting? Hence, VLV believes that a target date of 2011 for new legislation is neither reasonable nor likely, and that for such important legislation, the timetable should not be driven by the need for the renewal of commercial licences but by the importance of the issues to society as a whole.

9. Sections 1.43 – 1.45 - Meeting the Needs of the UK’s Nations Regions and Localities

9.1 The political administrative and fiscal divisions between the UK’s nations, regions and localities are in a state of flux. Moreover, as we noted earlier, ITV’s regional network was established over fifty years ago, and is largely based on the BBC’s original transmitter network. Local radio, on the other hand, is smaller in range, and more flexible in coverage and is meeting the gaps being created by the continuing decline in traditional print-based local newspaper coverage. Furthermore, much public information, especially at the local level is now widely available on the internet. In general, therefore, VLV considers that audiences’ future need for regional television news programmes could well decline, as both the internet and local radio stations could more readily and more cheaply provide citizens with locally relevant up-to-date news and information.

9.2 In its first review of public service television broadcasting, Ofcom reported that, between March 1999 and December 2004, the audience share for ITV1's regional news programmes (which are a specific condition of their licence) was consistently lower than that of BBC 1; and that during the same period its audience share fell by a third from 30% to 20%. (*Phase 3 – Competition for Quality*, Figure 3.3.). On the other hand, Ofcom notes in its consultation paper that "local online services and digital TV ... are not currently seen by *the core regional television audience* as a substitute for existing services." (para. 1.44) (VLV's emphasis) It would appear, therefore, that although many viewers seemed to be less and less interested in ITV's regional news provision, there may remain a core residual audience for regional television programmes which still values them. VLV also believes that it is possible that more local, as opposed to regional, television services, as referred to in our response to Sections 1.12 – 1.20, might also have a role to play in a post DSO broadcasting ecology.

9.3 Meanwhile, ITV has put forward a revised structure which would effectively reduce the number of regions, and provide most of them with peak-time sub-regional or local 'opt-outs'. VLV considers that Ofcom should allow ITV to reduce its costs by introducing its restructuring plan between now and 2012, but that in addition Ofcom should require ITV to:

- provide, on its website, guidance for viewers in the regions as to where they can find additional sources of regional, sub-regional, and local information and
- conduct research, in consultation with BARB, to monitor shifts in both viewer behaviour and viewer satisfaction, in response to the new arrangements.

9.4 As a result, in 2012 Ofcom would therefore be in a better position to produce an evidence-based proposal on the future of regional news programmes, which could be combined with a review of the geographical relationships between the coverage of regional radio and television transmitters and the political and administrative boundaries of the UK's nations, regions and localities. (See our proposal, above)

10. Scotland, Wales and Northern Ireland

10.1 In Scotland the pressures on the commercial broadcaster to reduce its PSB programming, could lead to a diminution in the provision of plurality in news sources at a time when the

future of Scotland's constitutional status is moving to the top of their national political agenda. There has been widespread criticism of PSB arrangements in the nations and regions in 2008. For Scotland, these criticisms are more fully detailed in interim reports of the Scottish Broadcasting Commission and the recent BBC Trust (King) Report. Evidence from the recent VLV Scottish Conference held in May 2008 also highlighted dissatisfaction with current PSB output.

- 10.2 It is commonly acknowledged that too few PSB TV and radio programmes originate in Scotland, Wales and Northern Ireland which deal with promoting political and cultural life among the regions and groups of the nations and in presenting a modern national image to broader UK and international audiences. In 2006, the overall spend by the PSB networks in Scotland was just 3%. In relation to news and current affairs, the recent King Report for the BBC Trust suggested that 'the BBC is missing opportunities to reflect more consistently the reality of devolution, and that it needs to go further in reporting the changing UK with the range that audiences are entitled to expect' (BBC Trust, 11 June 2008).
- 10.3 BBC news is too London-centric. The recent commitment by the BBC Executive and the BBC Trust to lift investment in production to a 'floor of 9% of UK network spend' and thus reflect more closely the licence fee income provided from Scottish, Welsh and Northern Irish viewers should move some way towards establishing an appropriate volume of programming originating in Scotland. We trust that the BBC will act on findings by King. But problems relating to PSB arrangements in the nations, not only relate to the BBC, but are relevant to PSB providers throughout the UK. We would ask that Ofcom examine further whether other these providers are reflecting the new national political and cultural realities in their news and current affairs output.
- i. 10.4 Other developments, such as the new joint agreement to start the dedicated Gaelic digital channel, enhance the output of public service broadcasting in Scotland, and introduce new possibilities in the provision of cultural programming. We would urge Ofcom to consider the findings of the Scottish Broadcasting Commission, due to be published in September 2008, and of the Culture Committee of the Welsh Assembly and similar such inputs from the Northern Ireland Assembly, before coming to any definitive conclusions that will impact on the PSB arrangements as they affect Scotland, Wales and Northern Ireland.

11. Sections 1.54 – 1.5 - Enhancing the Provision for Children

- 11.1 VLV welcomes Ofcom's recognition that there is no evidence that the market can fill the gaps in children's television programming left by the cutbacks in investment in this area by the commercial PSBs; and that, since 2003, funding for UK children's programming has declined by around £51 million per annum. VLV also agrees with the consensus reported by Ofcom that there is a need for intervention because of the unique and powerful influence that television has on the culture, language and values of young people, and that plurality in children's programming (i.e. the provision of UK-produced public service children's programmes by other broadcasters in addition to the BBC) is vital.
- 11.2 Although it has never been commercially viable, the provision of a wide range of high quality, diverse, original UK-made programmes for children has traditionally been seen, and until recently accepted, as a key part of ITV's public service remit, financed by cross-subsidy from other more profitable programme genres. The promised initiative by Channel 4 (see below) will help to fill the gap, but does not solve the problem of ITV's retreat from this area.
- 11.3 Since our response in December 2007 to Ofcom's consultation on the Future of Children's Television Programming we have welcomed Channel 4's decision to invest an initial £10 million in the provision of programmes for 10-15 year olds. However, this falls £20 million short of Ofcom's £30 million estimate of the funding needed to maintain plurality.
- 11.4 Ofcom has proposed three possible approaches to the issues facing children's programming in the short term, on which we comment as follows:
- We agree that the BBC should both develop its role in delivery, and also extend its range of provision for older children and teenagers. But we stress the importance of maintaining its present service at a high level for younger children. (There have been suggestions of an erosion of the BBC's full financial commitment to the area vis-à-vis other programme genres). The BBC Trust is currently considering the BBC's provision for children and young people and we await their report with interest.
 - As far as Channel 4 is concerned, we proposed in December 2007 a wider role for the Channel than Ofcom has now suggested, providing programmes not limited to older age-

groups. We concur with the suggestion that the role of S4C in delivering content (probably re-versioned) for all UK children should be explored, bearing in mind that the channel is supported by public funds. But this cannot provide for the range of programmes from broadcasters, other than the BBC, which are needed to ensure plurality. VLV therefore recommends a wider extension of Channel 4's remit to supply public service children's programmes in all areas other than pre-school.

- For ITV and Five we suggest that a range of fiscal measures should be considered to encourage the continued production and dissemination of original programming in the UK by the commercial PSBs. These might be augmented, if necessary, by a direct government grant provided the content was made universally available free-to-air. A levy on foreign channels targeting the UK should also be considered, requiring them to invest a percentage of their turnover or profits in original, UK or European production. A levy on the cinema industry between the late 1940s and the early 1980s financed the production of some excellent children's films by the Children's Film Foundation.

11.5 Whilst we believe that all formats of delivery should be considered as making up the overall provision of children's programming, there is a premium on programmes that are produced by, and for, the mainstream PSB channels, which are primarily viewed on TV sets in a domestic environment. This is not suggest reviving a 'golden age' of television viewing, that perhaps never existed, but is based on what research tells us is the most effective 'use' of children's programming in order to enhance educational, social and entertainment values. And whilst cartoons and one-off dramas, for example, might be appropriately distributed via the internet or on DVD, much of the lost ITV and Five children's output was in programme formats that have no equivalent on DVD, such as information programmes, entertainment magazines, drama series and serials.

11.6 We also echo the concern recently expressed by the Secretary of State for Culture and Media and Sport about the potential growth of 'product placement' especially in imported programming targeted at older children.

12. Radio

12.1 Our final observation is to express our regret at the failure to recognise, within the Review, the adverse effects that changes in the funding of public service broadcasting would have on BBC Radio. We also note, in passing, the lack of virtually any PSB requirements that the commercial broadcasting sector is required to meet. Whilst recognising that this Review does not formally include radio it is surely negligent to ignore the fact that PSB funding will affect BBC radio in a number of ways. including:

- Funding cuts (i.e. top-slicing the licence fee) intended to create changes within television immediately impact on radio too
- Cross subsidies exist between BBC radio and television in a wide number of areas; news is the most obvious example but there are others including cross-promotion, support staff, buildings, services etc.
- The ‘public service’ ethos which informs much of BBC practice, if perceived to be threatened by new funding arrangements in the context of television will also impact on radio.

12.2 Hence we recommend that the second phase of the Review should take cognisance of any contingent impact of its recommendations may have on the future of public service radio in the UK.

13. General Conclusions

13.1 Overall VLV welcomes Ofcom’s decision to review the regulatory arrangements for commercially-funded public service broadcasting and the way it is going about its task. Changes in viewer behaviour imply the break-up of the simple concept of a broadcasting channel. They will require Ofcom to distinguish carefully between the regulatory arrangements for the distribution of programmes, and those for producing programmes.

13.2 VLV also considers that the need for public service broadcasters to continue provide all viewers with **a universal service** will mean that there is a need for both a nationwide transmission system, as well as new methods of distribution, such as broadband. Ofcom also

needs to bear in mind the changes in political and administrative boundaries in the UK, as they impact on the current transmission networks for regional television programmes and local radio.

- 13.3 Viewers do want **a choice** in the provision of public service broadcasting programmes, and for this reason there would be widespread support for Ofcom's attempt to ensure that the commercially-funded public service broadcasters continue to be financially viable. However, television viewers also want **value for money**. They therefore want to ensure that public money is provided for those genres of programmes, and for those public purposes, which the market is not currently, or will not in the future, provide.
- 13.4 VLV does not support any proposal to 'top-slice' the BBC licence fee. Moreover, any programmes which are financed, or subsidised, with public money must be made universally available to viewers free-to-air. In line with EU rules on state aid, VLV expects Ofcom to ensure that the broadcasters put in place robust accounting systems in order to ensure that any public subsidies are not used to simply augment the broadcasters' commercial revenues and thus enhance shareholder dividends.
- 13.5 VLV awaits the second phase of this Review with keen interest.

Voice of the Listener & Viewer

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