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Submission to the consultation
on Ofcom's first report of its
review of public service television



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'Matters of International significance or interest' on public service television

Introduction

3WE is a steering group member of the Public Voice coalition, and as such will support Public Voice's more wide-ranging submission to this consultation.

In this submission we will deal solely with issues relevant to the coverage of international subject matter on public service television.

The Communications Act 2003 contains two public service obligations with regard to such programming:

- That there should be comprehensive coverage of news and current affairs stories from the UK 'and around the world';
- That there should be Tier 3 (non-news) general programmes about 'matters of international significance.'

3WE was instrumental in persuading the government of the case for both of these obligations. That case rests upon the increasing indivisibility of national and international events and processes which affect the lives of UK citizens, and therefore which require the availability of 'information and education' through the most-used medium, public service television.

This submission will look at how Ofcom's first report tackles these two requirements, and at the implications for these two types of programming of Ofcom's policy propositions.

About 3WE

1. 3WE is a coalition of international charities campaigning for high quality television coverage of 'matters of international significance or interest'. Its members include: ActionAid, Amnesty International, CAFOD, CIIR, Christian Aid, Comic Relief, ITDG, International Broadcasting Trust, One World Broadcasting Trust, OXFAM, Plan International, RSPB, Save the Children, Sightsavers International, Skillshare International, UNA-UK, UNICEF-UK, VSO, and the World Association for Christian Communication. 3WE's parent charity is the International Broadcasting Trust, charity number 326150.

2. Since its founding in 1989, 3WE has run a monitoring research project examining the quantity and range of non-news-and-current-affairs factual programming on international issues generally, and developing countries particularly, on the terrestrial public service TV channels.
3. 3WE has contributed to every major broadcasting policy consultation since the government first began looking at regulating converged communications in 1997. 3WE was instrumental in persuading the government to amend the Communications Bill so that a requirement for public service television to cover ‘matters of international significance or interest’ was included in the final Act [Section 264(6)(f)].

Background

4. The White Paper on regulating communications convergence, December 2000, promised that all the five public service channels would have a similar set of ‘core obligations’ which would include both international news and current affairs, and ‘international issues’ more generally.
5. The draft Communications Bill in May 2002 included the news requirement but not the one for ‘Tier 3’ programmes on international subjects. This omission became the subject of considerable comment both within parliament and outside. Over 100 MPs signed an Early Day Motion asking for the addition of such a requirement. Lord Puttnam reported to his joint scrutiny committee on the draft bill that in the electronic public consultation it held, the most frequently raised subject was the lack of an international requirement for Tier 3; and his committee, noting this, subsequently recommended that the government should look again at its list of public service obligations in the bill.
6. In the full Communications Bill published in October 2002, the government included the new requirement for programmes on ‘matters of international significance or interest’.
7. In January 2004 3WE responded to a letter of invitation from Ed Richards to contribute thoughts to the review of public service television. 3WE’s response was based on two sets of empirical evidence:
 - o 3WE’s monitoring research from 1989-90 to 2003 looking at non-news-and-current-affairs factual international programming on the main five TV channels, and
 - o The broadcasters’ own statements of programme policy for recent years
8. From this evidence, 3WE concluded that:

“the main five TV channels ‘taken together’ are failing to provide an adequate public service with regard to Tier 3 programming on ‘matters of international significance or interest’ [Communications Act 2003, Section 264(6)(f)]”
9. 3WE further stated, looking at the longitudinal data, that this failure had been ‘both serious and sustained’, and was found on all five channels. However we found the failure ‘most stark’ on ITV1, which in 2003 did not promise a single serious programme on ‘matters of international significance or interest’.
10. We stated that, in the light of other research carried out by the ITC and others – and further supported in the data collected by Ofcom, including the public opinion survey – this failure may well be symptomatic of wider failures to innovate and to maintain a broad range of factual programming. We urged Ofcom to gather similar data on other, similar areas of interest, specified in the purposes of public service television in the Communications Act 2003.
11. Our research data also considered the current affairs output of the five channels, with regard to whether developing country stories were covered, and found significant failures on ITV1 and Channel Five. Channel Five appeared to be in breach of both its licence conditions and

the requirement in Section 264(6)(c) of the Communications Act by not providing a current affairs strand capable of giving adequate coverage to international stories.

12. Following these conclusions we recommended that Ofcom should take enforcement action against ITV1 and Channel Five for their failure to provide serious factual international programming; and against Five for its failure in current affairs.
13. We further recommended that Ofcom apply pressure to Channel 4 to raise its level of commitment to programmes on ‘matters of international significance or interest’; and to ITV1 to raise its level of commitment to international current affairs.
14. Subsequently we were surprised to find that Ofcom had not played any role in approving or guiding the statements of programme policy for 2004, which would have been its first opportunity to redress these weaknesses. In our submission on Ofcom’s draft Annual Plan we noted that this has left the regulator without the appearance of a strong role in positive content regulation.
15. Finally we made two recommendations germane to the heart of the Ofcom review of public service television:
 - That “*Enforcing the requirements of the Communications Act 2003 must precede renegotiation of those requirements*”, and
 - That “[*There is*] *No case for rapid change in the ps TV requirements*”
16. 3WE then looked to the Ofcom review as the first major opportunity for Ofcom to show its approach to researching, monitoring, guiding, and where necessary enforcing the requirements on the five channels.

Consultation Question 1: do we agree with Ofcom’s overall assessment of the effectiveness of the current system?

17. We base much of what we say in this and the next section on the content of the Communications Act 2003, especially Clause 264 (which was Clause 260 during the Lords debates), and on the additional explanations of the policy intentions behind those wordings, as given by Lord McIntosh during the passage of the Act.
18. On 3 June 2003 (Hansard column 1172-73) Lord McIntosh said:

“Clause 260 sets out the overall remit for all public service broadcasting. To answer the noble Lord’s question, that includes Channel 3, Channel 4 and Channel 5. However, it is not an obligation on broadcasters; it is a very detailed set of standards set out for Ofcom. When we debated Clause 260, it was generally accepted that this was the most comprehensive definition of the content of proper public service broadcasting that we have ever had. If my noble friend Lord Puttnam looks at Clause 260(6)(c) he will see that coverage of international affairs in news and current affairs and in factual programming is covered in the definitions of Clause 260.

*“The purpose of it being an obligation on Ofcom is that Ofcom should have the responsibility of reviewing the performance of public service broadcasters, of reporting on that review **and of enforcement action**. That is not in Clause 260. It comes, as we shall see, in later clauses. It is absolutely essential that we should understand straightaway that **Clause 260 is not just a set of words but standards that have to be adhered to, and if they are not adhered to Ofcom has a duty to take enforcement action.**”* [our emphasis]
19. Clearly, therefore, in fulfilling its duty to report periodically on how the channels (taken together) have met the requirements in what is now Section 264 of the Act, the government, and parliament, expected Ofcom to ensure standards were met, and where they were not, to consider enforcement action.

20. A further question raised in debates in the Lords was the relationship between Section 260 and the individual remits of ITV and Channel 5. Peers wished to know whether these 'lighter' remits enabled those channels to 'opt out' of aspects of 260. On 3 June 2003 Lord Phillips of Sudbury asked (Hansard column 1174):

"Do I summarise fairly the Minister's proposition by saying that the provisions of Clause 261 are in addition to the provisions of Clause 260; that is, that where one refers to Channel 3, Channel 4 or Channel 5 services, all of the provisions of Clause 260 will apply to those channels notwithstanding the provisions of Clause 261?"

Lord McIntosh replied: *"That is correct."*

21. On 1 July 2003, pressed again on the relationship between the purposes of public service TV (then Clause 260) and the remits of ITV1 and Five (then Clause 261) Lord McIntosh stated (Hansard column 802):

"A licensed broadcaster cannot ignore Clause 260 just because it is a matter for self-regulation rather than a licence condition... The fact that a matter mentioned in Clause 260 is not mentioned in Clause 261 does not mean that it is unenforceable. It is clear from Clause 266 that licensed broadcasters must each contribute to fulfilment of the overall remit or face Ofcom enforcement action under Clause 266."

22. Therefore if these two channels were seen to fail to provide an aspect of programming specified in the 'purposes' of public service television, such as 'matters of international significance or interest', this would be a matter enforceable by Ofcom.
23. Coming now to Ofcom's consultation question 1, and using the empirical evidence referred to earlier, 3WE certainly agrees that "the main terrestrial TV channels (have)... not completely fulfilled the requirements of the Communications Act" and "that there are some important shortcomings in effectiveness, partly driven by the actions of broadcasters...". Indeed we go further in alleging 'serious and sustained failure', to which all the channels have contributed, to provide adequate programming on 'matters of international significance or interest'.
24. We are, however, disappointed with Ofcom's approach to gathering, analysing and reporting on its data. In particular we object to Ofcom's failure to analyse and report clearly, genre by genre, on each of the requirements specified in the Act.
25. We believe this is an ideological decision: Ofcom's policy framework proposals recommend moving away from a 'genre-by-genre' specification of public service television's purposes.
26. In our view this undermines the democratic process by which representatives of the people, in Parliament, decided how to legislate for the regulation of the purposes of public service television, in part by specifying the subject areas to be covered in Tier 3: science, religion, social issues, 'matters of international significance or interest' and so on.
27. Whatever the reasons for Ofcom's approach, the way the data is categorised in the first report makes it impossible to come to a judgement as to how adequately and effectively the channels met the requirement for programming on 'matters of international significance or interest'. This deprives interested parliamentarians, policy makers and the general public – many of whom, as noted above, took part in the battle to get this important item into the Act – of the opportunity to understand how international and global subject matter is being dealt with by our leading television broadcasters. [The same could be said of other subject areas specified.]
28. In the absence of such an analysis, the way that this kind of programming might fit into Ofcom's data reporting is frequently unclear. We deplore Ofcom's lack of precision in its terminology. For example, in some of the research data, 'factual programming' as a whole is tracked; elsewhere, but not consistently or with any clear definition, the data refers to 'serious factual programming'.

29. We also found Ofcom's many references to 'minority programmes' confusing and concerning. Ofcom's conclusion is that the public does not support the inclusion of 'minority programmes' on mainstream channels, but without definition of what this means it is impossible to know what the impact of such a conclusion might be.

Does the term refer, for example, to programmes 'of minority or specialist interest'? If so we would be deeply concerned, as factual international programmes are sometimes described as a 'minority interest'. Rule out all such areas of supposed 'minority interest' and not only do you again go against the will of Parliament, but also mainstream programming will immediately begin to demonstrate all of the characteristics of lack of range, creativity and innovation that Ofcom deplures.

On the other hand the term could refer to programmes specifically about ethnic minorities. Here we would also be deeply concerned, but for other reasons. Would Ofcom seek to pander to the prejudices of public opinion -- that they don't want minorities to have their own programmes -- or would it seek to uphold diversity, pluralism and the role of public service television in informing and educating the many minorities within our democracy about each other's lives?

In either case, following the expressed preferences of the public opinion survey would break the legislative definition of the purposes of public service television as 'dealing with a wide range of subject-matters' and 'to meet the needs and satisfy the interests of as many audiences as possible' found in Section 264(4)(a & b) of the Act. It could further conflict with requirements for reflecting the diversity of cultural activity [264(6)(b)]; for programmes of 'educative value' [264(6)(e)]; and for programmes on 'matters of specialist interest' [264(6)(f)].

30. We therefore recommend that:
- **In the further phases of this report, and in future such exercises, Ofcom should abide by the will of parliament in researching and reporting on the fulfilment, clause by clause and genre by genre, of the purposes of public service television**
 - **Ofcom should explain clearly and in much greater detail specifically with regard to which obligations the channels, taken together, are failing to fulfil those purposes**
 - **On the basis of this evidence and analysis, Ofcom should set out clearly its proposals for regulatory action, including the potential use of its enforcement powers, to address public service failures**
 - **Ofcom should make a clear public explanation of what it means by 'minority programmes' in this report**
 - **In its policy and regulatory management of 'minority programmes (whatever they are) Ofcom should not be led by a public opinion survey but by the obligation placed on it by parliament to uphold the purposes of public service television with regard to range, diversity, the satisfaction of as many audiences as possible, and the provision of educative programmes and those of specialist interest**

Consultation question 2: do we agree with Ofcom's interpretation of the data provided to us by broadcasters?

31. Since the interpretation, like the data upon which it is based, is diverse, wide ranging and complex, this is a difficult question to answer simply.
32. 3WE will concentrate here on one aspect of the interpretation to which we fundamentally object: that is, the failure to include any discussion or draw any conclusions with regard to appropriate regulatory action to enforce the obligations in Section 264 of the Act.

33. By failing to clarify the areas in which the channels have ‘important shortcomings’; and by failing to discuss whether these shortcomings may or may not trigger regulatory action, Ofcom is, in 3WE’s view, once more undermining the will of parliament by evading its own obligations as specified in the Act (see paragraphs 18-22 above).
34. We noted in the ‘Background’ section that we believe the channels’ failures to provide adequate programming on ‘matters of international significance or interest’ has been serious and sustained, and that on our evidence the most serious breaches have been by ITV1 and Channel Five; and we requested enforcement action. We are left with no further understanding of:
- a) whether or not Ofcom agrees with our evidence-based assessment of these failing;
 - b) whether, in the case of agreement, Ofcom would consider the failures to be sufficiently ‘serious’ to take enforcement action; or
 - c) whether, taken together with other failures in other areas of the ‘purposes’, they would be ‘serious’ enough to trigger enforcement action.
35. Because of Ofcom’s decisions – not to play a role in the 2004 statements of programme policy, not to analyse channel performance over the last five years genre by genre in order clearly to identify where shortcomings lie, and not to discuss or consider enforcement action – UK citizens, including the three million or so who support 3WE’s member organisations, do not have the ability to see transparently whether their broadcasters are performing as they should, or to feel reassured that if they do not, there is a pro-citizen regulator that will take action.

Consultation question 3: do we agree with the analysis of audience trends, and the challenges posed by digital TV and changing viewer behaviour?

36. The data provided in the section on ‘Impact’ and viewing trends is very valuable, and does highlight some useful issues and challenges.
37. This is a section where the category used elsewhere in the report, ‘serious factual programming’, would have been useful. These tables only show ‘general factual’ which can now be taken to include so-called ‘reality’ formats, make-over programmes and so on.
38. We have two reservations about the use of these bald audience figures to denote ‘impact’. The first is that it only measures viewing. It does not measure the impact of that viewing on individuals who watch the programme, on communities, or on society as a whole. Part of the value of public service broadcasting is that it does not necessarily have to achieve large mass viewing figures in order to have deep or wide impact. – measured in terms of changes in perception, the behaviour of viewers in seeking further information, the response of legislators and other authorities, for example. In early stages of the review process, Ofcom said it did intend to measure these aspects of psb. The BBC and Channel 4 said they would welcome such attempts at measurement, because they would help to broaden the criteria for judgement of the value of programmes that may reach smaller audiences but attain high social impact. Although we are wary of crude attempts to measure this type of ‘impact’, and believe that methodologies will take years to develop, test and refine:
- **We recommend that Ofcom, with the co-operation of broadcasters, academics and others, should develop a measurement index for the personal and social impacts of public service television programmes to be used in future periodic reviews**
39. Our second reservation about the use of audience figures in the section on ‘impact’ is that they may lead to erroneous conclusions, particularly when matched with the ideological preference for market-based solutions and the enthusiasm for the pay-TV market in its present form which are distorting factors throughout this report.

40. In this regard we note and support the submissions made by the Voice of the Listener and Viewer and by Carole Turner and Sylvia Harvey, which present some of the counter-evidence to show that the trends described by Ofcom are often overstated. This counter-evidence includes the numbers of people in multi-channel households who watch mainly public service channels; the failure of any of the niche channels to build audiences anywhere near the size of the smallest terrestrial channel; the lack of penetration by programmes from niche channels into the charts of most popular programmes; and so on. It also includes the evidence, some of it reflected in Ofcom's reporting of 'output', that the commercial terrestrial channels are in good health, with audiences reasonably stable, and programme spend high and rising.
41. Furthermore, the existence of trends in the existing pay-TV market over the last five years is not in itself an adequate predictor of trends in future years, particularly in the future digital marketplace. As Ofcom itself notes elsewhere in the report (eg paragraph 129 of the main report), the future expansion of digital multi-channel TV will mainly be through digital terrestrial television; and, again as Ofcom notes, the behaviour of viewers in DTT households differs significantly from that in digital pay-TV households.
42. These reservations and caveats are important because they challenge some of the more far reaching assertions by Ofcom through the course of the report. For example, Ofcom states that 'changes in the market *could* be threatening the ability of the main networks to continue to deliver the components of PSB as set out in the Communications Act'. It further asserts (par 136) that 'the licence fee *may* become harder to justify as fewer people watch the programmes it pays for, and over time licence fee funding *may* struggle to fund programmes sufficiently to satisfy viewers' expectations'.
43. As our emphasis suggests, these are highly conditional suppositions. For example, there is no evidence as yet that the licence fee is either unpopular or failing to provide sufficient programme funding.
44. As for the supposed difficulties of ITV to afford its public service requirements, their case had a sympathetic hearing at the turn of the century, when the dotcom crash led to an advertising recession. That was a temporary market condition. It also coincided with considerable mismanagement of ITV (in the opinion of shareholders, advertisers and some public opinion), such as the waste of £1 billion on the failed OnDigital platform. Nevertheless the content regulatory regime for those channels *was* considerably eased within the Communications Act 2003.
45. We therefore recommend that:
- **In Phase 2 of the review Ofcom should re-examine and revise its interpretation of the implications of viewing trends for the future framework of psb**
 - **Ofcom should show its acknowledgement of the counter-evidence for the argument that viewer behaviour will 'inevitably' undermine the future of psb and the licence fee**

Consultation question 4: do we accept Ofcom's interpretation of the role of television in society?

46. We note and welcome Ofcom's finding, from its opinion survey, that '58% said (TV) was their main source of knowledge about science, nature and history'. We would add the observation that there are some areas of content in which these figures could be even higher. The consistent finding of other commissioned polls, from 1985 to 2000, is that around 85% of people say television is their primary source of information about the rest of the world, including developing countries. Even in 2000, after the rise of the internet and other forms of new media, that figure remained, and was far ahead of any second medium such as radio or

newspapers¹. We also note that in DfID's annual surveys of public awareness of international development, increasing numbers of people are saying that we as a society need to know more about poverty in other countries because it affects our lives as UK citizens².

47. We further welcome the evidence in Figure 31 of the main report that there is majority public support for the importance of all of the main characteristics of psb tested in this part of the survey, including social value, quality, range and balance, diversity and general entertainment – with the exceptions of US imports and three categories of programmes reflecting the ‘needs and concerns’ of minority groups (ethnic, religious and political).
48. With regard to the minority groups, we urge Ofcom to apply some caution to its interpretation of the data. The wording of each of the three questions is ‘programmes that reflect the needs and concerns of’ the groups in question. It would not be surprising to find less than majority support for programmes that are only of relevance to minorities. By contrast, there *is* majority support for programmes that seek to spread general cultural and political awareness of ‘different communities’ and ‘different political and social viewpoints’. The implication here is that the majority of the public would not want to watch programmes that are not targeted to them, but *are* interested in learning more about the diversity of our society.
49. In itself, as discussed above, the findings on programmes that are about and targeted only at ‘minority groups’ should not necessarily lead to the abandonment of such programming. Public service broadcasting has historically been obliged – and remains obliged under various terms in section 264 of the Communications Act – to reach and serve the needs of as many audiences as possible. Ofcom should continue to uphold these terms of the Act.
50. In its interpretation of the data, Ofcom undervalues serious factual programming. For example, in paragraph 84, Ofcom concludes that ‘Figure 31 shows that people see news and entertainment... as the two key elements of the broadcast schedule’. This is factually incorrect. After news (87% say it is important) the highest figures are for suitable programmes for children, and ‘a variety of informative factual programmes’ (82% say these are important), with entertainment scoring 80%.
51. This is critically important because it shows that people are saying they want television to inform them, not just about day to day events through news – but about a wider range of subject matter and issues. Moreover, the findings under ‘range and balance’ show that people want this informative programming to be available as part of a ‘balanced diet’ in peak time and ‘at all times of day’.
52. This is further emphasised by the data in Figure 33, which shows that people rate ‘serious factual programming’ as the *third* most important type of programming *to them personally* after news and drama.
53. On the basis of these findings we recommend that:
 - **Ofcom should attach much greater importance, both in further phases of the review, and in its oversight of ‘Tier 3’ television content, to ensuring increased provision of serious factual programming, on the range of subject areas specified in the Act, including ‘matters of international significance or interest’**
54. We further welcome the finding in paragraph 92 that ‘the majority still want to see the channel (ITV1) obliged to deliver some specific forms of programming’; together with the ‘forum’ finding (paragraph 94) that ‘when *told*’ that regulation may need to be reduced, people’s ‘preference was for small-scale reductions across the board rather than a complete removal of obligations on any particular channel’; and the finding in [paragraph 93 that the

¹ See the MORI poll in ‘Watching the World, DfID, 2000

² See annual surveys by the Office of National Statistics for DfID

attitudes to positive content regulation of terrestrial-only and multi-channel households are strikingly similar. These findings suggest that:

- **Parliament was largely in tune with majority public opinion in specifying wide and detailed public service obligations for the channels and that Ofcom would be going against majority public opinion in proposing any large-scale reductions to particular channels' obligations**

Consultation question 7: do we agree with Ofcom's analysis of a 'sustainable rationale' for psb, and think that its definition provides a good basis for considering the future provision of public service broadcasting and the means to fund it?

55. No.

56. Public service broadcasting is a public good, like health and education. As such, its purpose, roles and funding are a matter for society as a whole. Society makes its decisions through democratic debate and through parliamentary action. The eventual form which the public good takes will be the outcome of many societal and political processes, of argument and debate, of consultation and participation, and of compromise.

57. In the case of public service broadcasting, these processes have been undertaken, both extensively and intensively, over a period from 1998 to 2003, culminating in the passage of the Communications Act 2003. That Act therefore embodies the outcome of a full societal negotiation over the purpose, role and funding of public service broadcasting – with the exception of the BBC Charter review, which is in the hands of government, and involves further public consultation and parliamentary scrutiny to 2006.

58. It was the will of parliament that the 'purposes of public service television' should be those expressed in Section 264 of the Act, and in other sections. This is, in fact, the first time that a comprehensive and fully scrutinised definition of public service broadcasting has been enshrined in UK legislation.

59. In the case of 'matters of international significance or interest' the democratic principle is particularly important. As described in earlier paragraphs, this requirement was not in the draft version of the Bill. The government was persuaded to change its mind, and to overrule objections from some broadcasters, through legitimate lobbying, campaigning, public and parliamentary pressure, and evidence-based representations to the joint scrutiny committee of both Houses of Parliament. Therefore, to change the definition of the purposes of psb, throwing out genre-based requirements such as this one, would clearly be to undermine the democratic process.

60. As such, the definition should be respected by all parties, and in particular it should be Ofcom's role to carry out the will of parliament by ensuring that the new system works to deliver the specified purposes. However, in a speech to VLV's Spring Conference immediately following the publication of Ofcom's report, chief executive Stephen Carter appeared to scorn Section 264:

"there is more than a passing resemblance between those fourteen objectives and the similar passages in the BBC's Charter drafted a decade ago. Before Channel 5 had even started broadcasting. When only a small minority of homes had extra pay-TV channels. And when the public service broadcasters commanded an audience share of 93%... The challenge is to 'maintain and strengthen' public service broadcasting in circumstances very different from those prevailing when the excellent statutory objectives were first penned."

It is this rationale – that parliament was behind the times and Ofcom must therefore move the whole debate onto new ground – that informs the first report of the review, and enables Ofcom to produce a new definition of psb, as well as strikingly different proposals for the future framework.

We reject this rationale. While it is true that aspects of Section 264 derive from the last BBC Agreement, they have been subject to pre-legislative scrutiny, legitimate lobbying and campaigning, political compromise, and to full parliamentary debate. Furthermore, in their new form, and in the way that the new regulatory framework to achieve them is legislated, they are based on the outcomes of five years of extensive policy consultation. From the Green paper of 1998 it has been explicit that regulatory policy for communications convergence would be ‘evolutionary’, not revolutionary. Finally, it was the explicit purpose of parliament at all stages in the passage of the Act to create a valid framework for the future of communications, including public service broadcasting, with the provisions expected to be in force through the period of digital switchover and well into the 2010s.

There is no case, in terms of democratic process, for the new regulator, in the first year of operation of the Act, and within six months of assuming its powers, to seek to overhaul the parliamentary outcome.

We therefore recommend that:

- **The definition of the purposes of public service television should remain that enshrined in the Communications Act 2003.**
- **While Ofcom may legitimately ask for further debate on the definition, the definition should only be changed through further parliamentary debate and amendments to the Act.**

61. We also dispute the accuracy of the rationale itself. Ofcom ‘argue(s) that in a digital world, many of the consumer market failures that justify intervention in the broadcasting market will disappear’. It asserts: “We believe that in the future, public service broadcasting will no longer be needed to ensure consumers can buy and watch their own choice of programming”. This ‘belief’ does not rest on evidence. It is, therefore, ideological.
62. UK citizens are unlikely to want an ideological regulator making new decisions about public goods that are supposed to operate in their interests. Rather, they are likely to want an effective guarantor of those interests under the framework decided by parliament on their behalf, as the ‘principal duty’ of Ofcom intends.
63. The tenuous nature of the rationale is also exposed by the conditional and speculative nature of Ofcom’s conclusions on the possible effects of increased competition in the market upon the justification for this public good, such as:
 - ‘changes in the market *could* be threatening the ability of the main networks to continue to deliver the components of PSB as set out in the Communications Act’
 - ‘the licence fee *may* become harder to justify as fewer people watch the programmes it pays for, and over time licence fee funding *may* struggle to fund programmes sufficiently to satisfy viewers’ expectations’
 - ‘Dissatisfaction with the BBC’s method of funding *may* increase’There is no evidence offered that any of these processes is occurring. Indeed, the evidence offered by Ofcom itself, as noted in previous paragraphs, is strongly supportive of current aims and characteristics of psb, and antagonistic to a reduction in psb obligations
64. The ‘belief’ that the digital TV market will satisfy all consumer needs and interests is worryingly naïve. No market works perfectly for consumers. No regulator should offer an ideological belief in the future perfection of the market. But in broadcasting, this is especially true, for reasons Ofcom notes elsewhere (paragraph 144 of the main report), and particularly because of the inherent tendency towards monopoly.
65. For the pay-TV market above all, it is deeply worrying that Ofcom should hold this belief. That market is currently a monopoly. Ofcom does not recognise it as such in this report, and therefore offers not a single new measure to improve the market. Barry Cox, the chair of the

Digital Stakeholders Group that is trying to drive towards digital switchover, wrote in 2004 that:

“I doubt whether we will ever be able to move to the kind of market... where you can buy what television you like in a way that most suits you – without much more serious legislative or regulatory intervention than we have seen hitherto.”³

66. Cox’s analysis is that three serious interventions are required to make the market work better: to reform ‘bundling’, where consumers are made to buy channels they don’t want in order to get those they do want; ‘tighter regulation of pricing structure so that platform operators can’t dictate the price of channels’; and forcing Sky to separate carriage from content. He wrote: *“I do not envy Lord Currie and his new Ofcom Board the difficulties they face if they decide to enable the viewers of digital TV to pay only for the channels they want to watch, and not for dozens and dozens they don’t. Nonetheless we have to hope they have the stomach for the task.”* Without any evidence that Ofcom is prepared for this task, its statement of mere ‘belief’ that the pay-TV market will work for consumers is worthless.
67. Ofcom’s ‘belief’ about the workings of pay-TV and its likely effects on psb is also undermined by its own evidence on digital take-up and the behaviour of households. Figure 39 in the main report shows that Ofcom itself recognises that the ‘natural’ market for the monopoly pay-TV that exists in the UK market is close to being reached. The Figure shows cable and pay-satellite growing only slightly from 2003 to 2012, and remaining under 50% of households. This would be in line with Sky’s own business strategies, which have concentrated on the existing subscriber base it had built up by the mid-1990s: first, converting them to digital, and second, extracting additional value from each subscriber – but not seeking substantially to grow the subscriber base.
68. Figure 39 shows Ofcom’s projection that Digital Terrestrial Television will be the main driver of further growth in digital take-up. And as Ofcom itself notes, audience expectations and behaviour in DTT households much more closely resemble analogue households. Therefore the changing trends in audience behaviour and consumer satisfaction that form the basis for Ofcom’s ‘belief’ in the pay-TV market and in the possibility that psb will be fatally undermined, are in fact past and existing trends, rather than trends for the future that can reliably predicted to become true of the majority of households.
69. We recommend that:
- **Ofcom should retract or significantly qualify its statement of belief in the idea that consumer interests will all be satisfied in the approaching digital market**
 - **Ofcom should launch a long-term study of the operation of the pay-TV market, to secure the evidence upon which to base any future policy or regulatory proposals designed to protect the interests of citizens and consumers**
 - **Ofcom should, in phase 2, review and modify those policy proposals it has made in Phase 1, and which are dependent on its argument about markets meeting the needs of consumers**

Consultation question 9: on the ‘immediate issues’, do we agree with Ofcom’s conclusions about the immediate priorities?

70. We agree with the importance of achieving digital switchover, subject to the condition of universal access, as digital services deliver better television services for citizens and consumers.
71. For reasons discussed above, we do not agree with ‘the need to move away from a genre-specific approach’ to regulation. We also note that the purposes of ps television as defined in

³ ‘Free for All?’, Demos 2004

the Communications Act cover *both* characteristics ('wide range, diversity, high quality', etc) *and* genres.

72. On Page 10 of the main report, Ofcom asserts the need to move away from 'narrow obligations specifying hours of certain types of programming'. This has already been done through the Communications Act, and remains to be carried through into new licenses. However, even after the withdrawal of the 'hours' specifications, the commercial broadcasters should *still* be required (as supported by public opinion in Ofcom's audience survey) to provide certain types of programming and to meet public service standards.
73. Further on the same page, Ofcom suggests reducing ITV1 and Five's public service obligations to news, regional news and original UK production. We strongly reject this proposal. It is not supported by public opinion in the Ofcom survey. It is not supported by 3WE's member charities, or by other voluntary sector bodies, who want to see ITV1's audiences treated to some of the informative and educative types of programme available to other audiences. It is not supported by the Church of England and other church and faith groups, who want ITV1 to continue to provide programmes about 'religion and other faiths'. It is not supported by the BBC, which wants ITV1 to provide competition for quality. It is not supported by parliament, which was clearly and explicitly told by Lord McIntosh that the effect of the Act's provisions would be to require contributions to the purposes of public service television from all five channels. The claim that ITV's obligations are not affordable is not based on evidence, since the evidence shows that programme spend has risen. It is not based securely on market analysis, since Ofcom's analysis puts undue emphasis on the advertising downturn in 2001 and 2002. This was the period of the dotcom crash, Enron and other scandals, and the post-9/11 market reaction. It was a temporary condition of the market. It does not take account of the way ITV contributed to jeopardising its own advertising revenue through poor management of its content and schedule, and the waste of £1 billion on OnDigital. It does not take account of the changes to regulation already offered to the commercial psbs under the Communications Act, such as the end to quotas for Tier 3 programming and the move to more self-regulation in this.
74. Significantly, the Ofcom proposal does not take account of the government's own intentions, as expressed during the Communications Act debates referred to above.
75. Ofcom believes that it can pursue this proposal through negotiations on the new channel licences. However, Government still expects Ofcom to ensure that the channels offer a 'broadly' similar service to that under their current licences. In a recent letter to 3WE, Lord McIntosh wrote⁴:
- "Ofcom has stated that broadcasters will not be able to make any material changes to the character of the service that they provide. Removing the promise to provide a degree of religious content would constitute such a change.*
- "I hope this makes clear that, while the quantitative obligations on each broadcaster will be removed when the new digital licences are negotiated at the end of this year, **broadcasters will still have to provide broadly the same service as they have done under previous licences.**"*
76. We therefore recommend that:
- **Ofcom should abide by the will of parliament, by its own principal duty, and by its own public opinion survey evidence, and withdraw the proposal radically to reduce the public service obligations on ITV1 and Five**
 - **Ofcom should beware 'regulatory capture' by the self-serving arguments of commercial providers**

⁴ letter of 7 June 2004

- **Ofcom should emphasise the enforcement of the new Communications Act framework, which should take priority over any renegotiation of the public service obligations**
 - **Any future proposals to change channels' remits or character should be made in the form of recommendations to the Secretary of State and placed before both Houses of Parliament, as the Communications Act provides**
77. We agree with 'the need for the BBC to reaffirm its position as the UK standards setter for high quality PSB provision'. We have set out our own proposals to ensure this, in our submission to the consultation on the BBC's Charter (see www.ibt.org.uk/3WE)
78. We do not see how the high demands which Ofcom rightly places on the BBC are supported by later suggestions that the BBC's funding be redistributed to other broadcasters.
79. As noted above, regarding 'other issues we think Ofcom should be considering', we recommend a much greater emphasis on the importance of securing a wide range of high quality serious factual programming across the public service channels, as supported by the audience data.

Consultation question 10: do we agree with Ofcom's ten policy propositions? What considerations should Ofcom take into account in its further analysis of them?

80. **Proposition 1** is to 'examine the prospects for PSB funding and the case for seeking alternative resources'. In principle we agree that additional funding streams should be identified where possible. We recommend that:
- **The word 'alternative' should be replaced with the word 'additional' to make clear that Ofcom seeks to expand, rather than substitute for, existing funding streams**
81. However, Ofcom's case for the proposition is that the commercial funding base is being eroded and the licence fee 'may' be jeopardised. We disagree that evidence shows either of these to be the case.
82. We would support the identification of additional funding on the condition that it includes funding for new, community and not-for-profit media that extend the public service offering, and is not simply directed at existing broadcasters.
83. **Proposition 2 and 3 are** 'to examine the case for sharing existing funding streams among a greater number of broadcasters and allowing broadcasters or producers to bid for PSB funding' and to establish a 'new intermediary' to distribute funding. We reject Proposition 2. We want the BBC to 'make the market' for high quality, popular public service television across genres. We want its services to reach the whole population. We want it to fulfil a new set of purposes designed to 'serve the communications needs, rights and interests of citizens'. Ofcom wants it to set standards across the market. None of these is likely to be supported by redirecting its funding to other broadcasters.
84. We note that ITV, Channel 4 and Five have all opposed the idea of an 'Arts Council'-type contestable fund.
85. We note that some contestable funds do exist within UK broadcasting. For example, Channel 4 news maintains an 'independents' fund' to enable independent news producers to supply news stories, often international ones, that the broadcaster would not otherwise produce. This fund has been used to break some important international news stories. DfID provides a documentary fund which enables independent producers, in partnership with the broadcasters, to access seed funding for documentaries to be filmed in developing countries. We support these funds and therefore could not, in principle, oppose the idea of 'contestable funding' subject to the conditions that:

- The finance is not taken from BBC licence fee income
 - The objective is to support certain targeted genres known to be in decline, and particularly expensive genres such as those that require foreign filming
 - The conditions of funding demand certain guarantees to do with peak scheduling
86. **Proposition 4** is that ‘not-for-profit organisations’ should continue to provide a ‘substantial’ part of psb. We agree with this proposition.
87. Further, we call upon Ofcom to clarify the range of ‘not-for-profit organisations’ to which it is referring. 3WE has supported the Public Voice coalition’s call for new community and not-for-profit media to be supported as an extension to the public service offering.
88. **Proposition 5** suggests that ‘the market is likely to produce significant amounts of programming which meet both the purposes and characteristics of psb’ and proposes to ‘explore’ how these can be provided ‘without public intervention, by the evolving broadcasting market’. We do not agree with this proposition, though we do not reject it outright.
89. Although members of the public have raised the question as to whether non-ps channels provide ps-type programming, we can find no evidence in the report on which to base proposition 5. It appears to be an afterthought by Ofcom. Therefore, as a first step we recommend that:
- **Ofcom should sponsor an independent academic study of the extent to which, and the means by which, the non-ps channels might provide ps-type programming, both now and in the future**
90. In the absence of such evidence, 3WE expresses its strong inclination to believe that the existing examples will be very limited. This is partly the question of ‘ends and means’: in other words, as Ofcom’s Proposition 4 recognises, social purposes are more likely to be achieved when organisational aims align with them – public goods are better provided by organisations which only serve the public good, rather than the interests of shareholders.
91. In our area of expertise, factual international programming, there are a number of niche pay-TV channels which provide factual programming on international subject matter, notably the Discovery channels and National Geographic. We know that both parents and children in multi-channel households value then informative and educative nature of much of their programming. Nevertheless, the aims of these channels are to seek subscribers in order to make profits for shareholders. This intimately affects the content of programming. The channels do not, in general, deal with the pressing and complex problems of development, environment and human rights that affect the majority of the world’s people, living in the countries in which their programmes are often filmed. Rather, they present a simplified, ‘naturalised’ version of Nature and exotic peoples. They are the coffee table magazine to the BBC’s Sunday newspaper.
92. As a case study, Ofcom would do well to study the BBC series The Blue Planet. A six-part series on the life forms found in the world’s oceans, with spectacular filming and the highest production values, it was hailed as one of the key public service successes of the BBC at the turn of the century, and was watched by millions. The series was made as a co-production deal with Discovery, to maximise sales in other markets. As a direct result, it was seriously criticised by environmentalists for not once acknowledging the problems of pollution, overfishing and changes to the oceans caused by climate change: ‘not a plastic bag or a floating condom in sight’. In fact, the BBC realised the deficit and commissioned a seventh part, looking at the environmental issues. Discovery would not co-fund this, and the BBC put it out in a different, off-peak time slot to the main series.
93. We also note that one of the characteristics of psb that pay-TV channels would not meet is universal availability.

94. Our view, while awaiting further evidence, is that public service programming is best provided by public service broadcasters, regulated as such (including the commercial psbs with a history of provision).
95. **Proposition 6:** within this proposition we reject the proposal that some BBC services should go to subscription. Either a BBC service should meet all the public service criteria, including universal availability, or it should not form part of the BBC's services.
96. **Proposition 8** is to try to maintain Channel 4's distinctive role and ethos. We support this proposition. It will, however, be undermined if the public service obligations of its competitors, ITV1 and Five, are significantly reduced, allowing them greater commercial freedom and an advantage in the chase for audiences.
97. **Proposition 9** is to consider the scope for raising the contribution to psb by independent producers. As we have noted elsewhere, this in itself will not cure the problems of lack of range, creativity and innovation in public service television. The problem lies with the commissioning and scheduling policies of the broadcasters, not with the secondary question of programme suppliers.
98. **Proposition 10** is that in the digital-only market, 'public intervention to secure psb may not be justified on its present scale'. We reject this proposition. It is not based on evidence and is speculative and ideological. Parliament considered the market both before and after digital switchover and framed the Communications Act with it in mind. Ofcom should respect the will of parliament.
- 99.
100. regard to commercial channels, Ofcom rightly notes that advertising suffered in 2001 and 2002. This was the period of the dotcom crash, Enron and other scandals, and the post-9/11 market reaction. It was a temporary condition of the market. ITV also contributed to jeopardising its own advertising revenue through poor management of its content and schedule, and the waste of £1 billion on OnDigital. While we note that the *share* of total TV revenues for commercial ps channels has fallen, that is because pay-TV has been opening up a previously unexploited market. We note also Ofcom's evidence that programme investment has continued to rise. We therefore believe the arguments for the 'unaffordability' of public service obligations for ITV1 are overstated. We recommend that: