

## **Ofcom draft Annual Plan 2014-15 – response from the Welsh Government**

**This response has been cleared by the Rt. Hon Carwyn Jones AM, the First Minister of Wales.**

The Welsh Government welcomes this opportunity to comment on Ofcom's Draft Annual Plan for 2014/15.

In general we are broadly supportive of the approach to ICT infrastructure issues suggested by Ofcom in this Annual Plan and look forward to working with Ofcom on the projects proposed for the forthcoming year. However, we were disappointed that Ofcom chose not to address a fundamental concern expressed in our response to its draft Annual Plan for 2013-14, about the fitness for purpose of its underlying strategic purpose to contribute to and implement public policy defined by Parliament. Given the reality of devolved government in the UK we asked for this strategic purpose to be reviewed during 2013/14, as we feel it should now be extended to include policy defined by the devolved administrations, including the Welsh Government.

It is equally unfortunate that this important issue is not acknowledged in Ofcom's latest Annual Plan. Over the last year a number of our concerns relating to proposed priorities and actions on broadcasting - expressed in our response to the draft Annual Plan for 2013/14 and expanded upon in subsequent consultations on specific issues - have not been addressed. On occasion the reasons for this have not been provided, although we have requested dialogue with Ofcom to discuss these matters in detail, in order to explain the policy context and their specific impacts in Wales.

This clearly demonstrates the urgent need for Ofcom to discuss with us the strengthening of its engagement with the Welsh Government. In light of the increased flexibility granted to Ofcom by the UK Government within the last year, we believe that an opportunity exists for Ofcom to agree improved working arrangements with the Welsh Government (and the other devolved administrations) to address such concerns - for the benefit of citizens in Wales and the UK.

We will expand upon these issues below.

### **Consultation Questions**

#### **Q1. What are your views of Ofcom's proposed priorities 2014/15?**

- The priorities described in the Draft Annual Plan for telecommunications are broadly in line with the policy direction of the Welsh Government. We support measures to ensure competition in the superfast broadband market in Wales and we look forward to analysing several pieces of research which Ofcom is set to make available, on competition, quality and coverage of fixed and mobile services. We discuss below the importance of considering regional impacts, both in the research Ofcom proposes and in the design of forthcoming spectrum releases.

## **Strategic purpose 1 – Promote effective communication and informed choice**

- **Ensure effective competition and investment in both current and superfast broadband**

In 2010 Ofcom established a regulatory framework for investment in next-generation access (NGA) and competition in superfast broadband, requiring BT to offer virtual unbundled local access (VULA) to its next-generation fibre infrastructure, so that other providers can compete with BT in the supply of superfast broadband services to consumers. We support measures to ensure competition in the superfast broadband market in Wales. The rural nature of much of Wales already acts as a barrier to competition in sparsely populated areas where the low numbers of premises served by exchanges and line length act as disincentive to investment by large operators. There are a small and growing number of independent ISPs in Wales which could benefit from VULA.

- **Fixed access market review**

The draft Annual Plan states that Ofcom's final conclusions following its review of the markets for fixed voice and broadband connections and local access are due to be published in early to mid-2014. We look forward to seeing the outcomes of the reviews and considering their impact on competition and investment in the provision of broadband services.

Ofcom also states that it will continue to ensure that BT meets all reasonable demands for both the NGA access remedies and other regulated services (such as wholesale line rental and local loop unbundling), allowing other providers to use them effectively. We have already described the barriers to competition presented by the rural nature of much of Wales and we support measures to ensure competition in the superfast broadband market. There are a small and growing number of independent ISPs in Wales which could benefit from NGA access.

- **Openreach quality of service**

Poor service for the end user is an issue that arises regularly, often as a result of old or poor quality cabling. Currently this is often a source of frustration in deploying fibre to the cabinet solutions, where the cable to the premises can reduce the quality of the service experienced. As such we look forward to seeing Ofcom's final statement on proposed new regulations designed to increase the incentives on Openreach to improve its quality of service delivery, which is due to be issued in spring 2014.

The draft Annual Plan notes that in 2014/15 Ofcom will complete work on introducing new regulatory obligations on Openreach in the fixed access markets. It states that Ofcom will monitor compliance and performance in the delivery of Ethernet services and consider whether further action is needed. Ethernet services are often an important tool for businesses in Wales. Our growing creative and finance sectors in particular need the bandwidth that Ethernet services provide. As such the quality and price of the services provided should be monitored keenly.

- **Mobile broadband speeds**

Ofcom states that it will publish the average mobile broadband speeds received by 3G and 4G customers, to help consumers make the right choices and encourage providers to improve their performance. Will this information be published on a regional/sub regional basis? This is important as 3G and 4G could be alternatives to fixed line broadband in remote areas of Wales. Some reassurance about the speeds achievable may make mobile broadband a more attractive proposition.

### **Strategic purpose 2 – Secure optimal use of spectrum**

- **Award the 2.3GHz and 3.4GHz bands and prepare for the potential release of the 700MHz band**

With regard to the proposed consultation in summer 2014 on proposals for the award of this spectrum, the Welsh Government would urge Ofcom to define minimum population coverage targets at a regional level for any future release of spectrum in the 2.3MHz and 3.4GHz bands, in order to guarantee mobile services across the nation. In addition, Ofcom may wish to consider imposing geographical coverage and rural network roaming obligations.

- **Prepare for a potential change of use of the 700MHz band**

The draft Annual Plan notes a range of studies currently being undertaken on how change of use of the 700MHz band might practically be implemented and states that Ofcom will work closely with government to consider the implications of its analysis. We look forward to working closely with Ofcom on the future use of the 700MHz band.

### **Strategic purpose 6 – Contribute to and implement public policy defined by Parliament**

- **Ensure that the EC's Connected Continent proposals are delivered in a manner that is consistent with UK interests**

Ofcom states that it supports the European Commission's high level objective to promote the development of the European single market and improve conditions for investment in the sector, for the benefit of European (including UK) consumers. Ofcom must ensure that it is well-equipped to fulfil its statutory obligations to promote the interests of UK consumers and citizens. We support Ofcom's efforts to ensure that new rules are workable and proportionate and will not disadvantage Wales specifically.

## **Q2. What are your views on Ofcom's proposed major work areas for 2014/15?**

### **Strategic purpose 1: promote effective competition and informed choice**

- **Conduct the business connectivity market review**

Ofcom intends to start the next Business Connectivity Market Review in 2014, reviewing the evidence about competition in leased-line markets in the UK during 2014/15 to develop proposals for remedies which will then be consulted on. We welcome a review into competition in the leased line market.

### **Strategic purpose 3 – Promote opportunities to participate**

- **Continue to promote the provision of better mobile coverage and service information in order to inform both consumers and policy decisions**

We welcome Ofcom's plans to improve mobile coverage, which is a particular issue in the deep rural areas of Wales. We share a desire to improve mobile coverage on the rail network. We would like to see progress in introducing national mobile roaming. In some areas of rural Wales a mobile signal can only be found from one provider. Indeed in some areas there is no signal. National roaming would mean that a reliable signal is easier to access no matter which network the customer subscribes to. It would also reduce the requirement and cost of infrastructure. We look forward to seeing the outcomes of Ofcom's research on the coverage and quality of mobile networks and services, including the performance of 3G and 4G data services and the reliability of voice calls. Again, we hope this research will be made available on a regional/sub regional basis, as 3G and 4G could be alternatives to fixed line broadband in remote areas of Wales.

We also look forward to seeing the outcomes of the proposed study into mobile coverage on road and rail routes and any technical advice. We share a desire to improve mobile coverage on the rail network.

- **Work in collaboration with government and industry to promote widespread availability of fixed and mobile superfast broadband**

Mobile notspots are a particular issue in parts of rural Wales; we welcome Ofcom's focus on mobile coverage and also share a desire to improve mobile coverage on the rail network.

Analysis of the sufficiency of the current, targeted interventions on the availability and superfast broadband is also to be welcomed.

### **Strategic purpose 5 – Maintain audience confidence in broadcast content**

- **Radio regulation**

It is disappointing to note that this section of the draft Annual Plan focuses narrowly on the possible impact of changing platforms and increased choice (e.g., via internet and digital radio) on music formats and the length of licence awards.

Under the existing legislation commercial radio stations are not obliged in their output to reflect the language of local communities unless such a condition is included in the licences. We reiterate what we have said previously, that we would not wish see further relaxation or removal of the current localness rules. In the context of the Communications Review we have informed DCMS that we wish for the new legislation to include a commitment for commercial radio stations to reflect the language of local communities. Under the existing legislation commercial radio stations are not obliged in their output to reflect the language of local communities unless such a condition is included in the licences.

- **The government's digital radio programme**

The Welsh Government was pleased to learn in the UK Government's announcement in December 2013 that there will be continued investment by the UK Government, as well as the BBC and commercial radio, in support of digital radio roll out.

We recognise that there have been improvements in DAB coverage in Wales over the past year and we welcome Ofcom's commitment to ensuring that the needs of the people of Wales are considered in any work undertaken on DAB radio technology and migration. However, the Welsh Government would like to be able to reassure Welsh listeners that DAB service in Wales is no worse than Welsh AM/FM radio coverage at present, and available in areas where the national radio stations (Radio Wales and Radio Cymru) can only be transmitted on the AM spectrum. The Welsh Government continues to be concerned that even when the proposed criteria are met on a UK basis, there would almost certainly be a significantly lower level of DAB penetration in Wales. We have consistently stressed that we would not be in favour of digital switchover for radio until there was a guarantee of at least 97% coverage for DAB throughout Wales.

The Welsh Government urges Ofcom to continue to liaise with the BBC and other stakeholders in order to attain the best service for consumers throughout Wales. In the same way we ask Ofcom to continue to try to resolve the ongoing problems in some areas of Wales, especially mid Wales and north east Wales where viewers have experienced problems in receiving Welsh television channels.

## **Additional comments on the draft Annual Plan**

- **Public Service Broadcasting**

In our response<sup>1</sup> to Ofcom's draft Annual Plan for 2013/14 we set out in detail the crucial role of the Public Service Broadcasters to Wales, especially in the context of a press that is weak in terms of its national reach. We also described the unprecedented attack on public service broadcasting in Wales during recent years and set out a strong case for Ofcom to urgently fulfil its obligations, in order to protect and enhance public service broadcasting in Wales. We welcomed the priority Ofcom gave to consulting on proposals for the relicensing of Channels 3, 4 and 5 (including consideration of programming obligations) and we responded in detail<sup>2</sup> to those proposals during the year. We also welcomed Ofcom's intention to conduct a timely review of public service broadcasting. It is unfortunate that this much needed review did not take place.

The new draft Plan briefly acknowledges that some work is required to complete the relicensing of these broadcasters during the coming year, but beyond that there is no commitment to any significant, further consideration of public service broadcasting. This may be the result of the recent relaxation of Ofcom's statutory duties in this regard by the UK Government, but it is lamentable given the serious public service broadcasting issues which we, and others, have already highlighted.

We have consistently highlighted issues such as appropriate coverage of Wales on the main television networks and the importance of the BBC Trust and Audience Council for Wales continuing to implement the recommendations of the King report. Although there is evidence that there have been improvements in the coverage of devolved political issues in Wales since the King Report, this improvement is largely confined to the BBC. We have noted that the recommendations of the King report are also relevant to ITV news and Channel 4 news and that it is vital that these channels appropriately reflect the devolved nations in their news and non-news provision. We urged Ofcom to reflect this in any analysis undertaken of public service broadcasting and in the context of the relicensing of Channels 3, 4 and 5.

We have further noted that Channel 4, as a recipient of public funding, should be required to increase the proportion of network commissions in the nations and regions. In our response to the consultation on Channel 4's licence renewal we provided substantial evidence that Channel 4 can achieve its suggested new target of 9% for Out of England productions by 2016 - earlier than the 2020 deadline it

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[http://stakeholders.ofcom.org.uk/binaries/consultations/annualplan1314/responses/Welsh\\_Government\\_respons.pdf](http://stakeholders.ofcom.org.uk/binaries/consultations/annualplan1314/responses/Welsh_Government_respons.pdf)

2 [http://stakeholders.ofcom.org.uk/binaries/consultations/c3-licensed-area/responses/Welsh\\_Government.pdf](http://stakeholders.ofcom.org.uk/binaries/consultations/c3-licensed-area/responses/Welsh_Government.pdf)  
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has suggested. We were far from alone in taking the view that C4C's proposal is not sufficient, so it is regrettable that Ofcom chose to put aside all of the reservations expressed and to consult again on the original proposal, making it clear that it is minded to agree with C4C.

We welcomed the decision to create a separate Channel 3 licence for Wales; we have been clear that Wales needs a strong independent voice in broadcasting to provide a counterbalance to the provision of BBC Wales and ITV Wales should have a vital role to play. We have said before that licensees are most accountable to government at the time of licence renewal, and in our view financial considerations overrode the needs of the Welsh people when the 1990 licence award for Channel 3 was made. This, combined with subsequent relaxation of licence conditions, allowed the service in Wales to diminish, economically and in terms of Welsh content. Although existing levels of provision must be protected as a bare minimum, they are not appropriate, or even adequate. We made the point that a new licence is an opportunity to redress this balance and restore a more appropriate level of provision, protected for the future. We asked for consideration to be given to a level of provision that reflects the cultural diversity and richness of Wales and its people, and for the Welsh Government to be involved in discussions. We also asked Ofcom to consider putting in place new arrangements and mechanisms to protect the integrity of the Wales Channel 3 licence, e.g. in the event of a change of control. Again, we asked Ofcom to discuss this with us. Unfortunately, our requests for discussions were not taken up and it now appears that new licences will be issued on terms very similar to the existing ones. The Welsh Government would welcome early discussions with Ofcom and the new Channel 3 licensee for Wales, to ensure that the Channel 3 Wales licence reflects Welsh identity in name and output, as happens with the equivalent Channel 3 broadcasters in Scotland and Northern Ireland.

- **Ofcom's strategic purpose to support public policy as defined by Parliament**

This strategic purpose remains unchanged, and limits Ofcom's duty in support of public policy to policies defined by the UK Parliament. We made the point in our previous response that Ofcom should operate in a manner consistent with the reality of devolved government in the United Kingdom, noting that the current lack of direct accountability to Wales in relation to Public Service Broadcasting is no longer appropriate. The Welsh Government is responsible for a number of inter-related functions at the heart of public service television, including Culture, Education and training, Social welfare, Sport and recreation, the Welsh language and Economic Development (especially as the Creative Industries, including our broadcasters, are one of the key economic sectors in Wales) and public policy in many areas affected by Ofcom's work is now made in Wales, not Westminster (this is also true with regard to network infrastructure).

We asked Ofcom to build a review of the scope of this strategic purpose into the annual plan for 2013/14. Unfortunately it did not do so. The recent changes to Ofcom's statutory duties make this even more important. As such, we would urge Ofcom once again to add a review of this strategic purpose to its new Annual Plan. We are confident that if this is considered thoroughly, Ofcom will be inclined to recommend to the Secretary of State that this strategic purpose be amended as we

have described. As before, the Welsh Government stands ready to engage in dialogue with Ofcom, the UK Government, the other devolved administrations and other key stakeholders on this matter. We would ask Ofcom to respond directly to this request in its final Annual Plan, providing a detailed explanation of its position.

- **Conclusion**

There is substantial cross-party concern in the National Assembly for Wales about recent developments in relation to the media industry in Wales and this was reflected in the Plenary debate<sup>3</sup> held in December 2013. In our written evidence to the Silk Commission the Welsh Government called for stronger powers for Welsh Ministers with regard to appointments to the regulatory bodies that govern broadcasting in Wales. In our evidence we suggested that the Ofcom Board should include one member specifically charged with representing the views of Welsh citizens, and that this member should also be appointed with the agreement of Welsh Ministers. We also proposed that the BBC Trust Member for Wales and the Chair and Members of the S4C Authority should be appointed with the agreement of Welsh Ministers.

It is disappointing to note that the recent DCMS-led review of Ofcom's statutory duties did not mandate for closer participation by the devolved nations, nor did it protect our current level of involvement. Although it specified that the nations should be represented on the Ofcom Content Board, Ofcom can discontinue any of its current Boards at any time if it so wishes, without consultation with the Welsh Government. The review has also resulted in a significant relaxation of Ofcom's statutory duties, especially with regard to the public service broadcasters. DCMS has acknowledged that this will only save a modest amount of public funding, but it did not address the Welsh Government's real concerns about the implications of this on the quality and plurality of public service broadcasting in Wales.

It is clear from some of the recent consultation outcomes described above that the scope of Ofcom's current commitment to the nations, which is generally limited to providing advice to devolved governments on their programmes, should be reconsidered. Improved dialogue and accountability is required so that the Welsh Government can provide detailed context about the situation in Wales; this would inform Ofcom's interventions so they are better targeted and more effective in Wales. The Welsh Government will continue to make the case to the UK Government that improved governance arrangements for Ofcom and other key institutions are required, that appropriately reflect the reality of devolution. In the meantime we are open to discussions with Ofcom at any time to explore ways in which we can build upon the positive relationship that already exists, within the boundaries of Ofcom's current obligations, to better address some of the issues we have highlighted.

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<sup>3</sup> [http://www.assemblywales.org/docs/rop\\_xml/131204\\_plenary\\_bilingual.xml#119300](http://www.assemblywales.org/docs/rop_xml/131204_plenary_bilingual.xml#119300)