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Open letter about Ofcom's report to the Secretary of State under s.229 of the Communications Act 2003

Section 229 of the Communications Act ('the Act') places a duty on Ofcom to submit a report ('the s.229 report') to the Secretary of State by 30 June 2022 in anticipation of a new licensing round for Channel 3 and 5 services.

The current licences expire on 31 December 2024, with a new ten-year term due to commence on 1 January 2025. Each of the 16 Channel 3 licences is held either by subsidiaries of ITV plc or STV plc.¹ The Channel 5 licence is held by Channel 5 Broadcasting Limited (a subsidiary of ViacomCBS Inc).

The first stage in the licensing process is the s.229 report. In this, we are required to assess the capacity of existing Channel 3 and Channel 5 licence holders to "contribute to the fulfilment of the purposes of public service television broadcasting... at a cost... that is commercially sustainable."

If, following our assessment, we consider the Secretary of State should exercise their powers either to prevent renewal or to remove or amend any of the current public service obligations specified in the Act, we must include a recommendation to that effect.

Recommendations on the future of Public Service Media

In July 2021, we published our [recommendations to Government](#) on the future of Public Service Media ('PSM'). In this document, we said that existing legislation needs to be overhauled to reflect changing audience consumption habits and technology. We also said the obligations on Public Service Broadcasters need to be modernised to include requirements that cover both broadcast TV and online services. Providers of PSM will need flexibility to innovate and respond effectively to changes in audience habits and technology.

We made recommendations which, if adopted by Government, would be relevant to Channel 3 and 5 licensing, including:

¹ Subsidiary companies of ITV plc hold the national breakfast licence and 13 of the 15 regional licences: (Anglia ITV (East of England), Border ITV, Central ITV (East, West, South Midlands), Channel Television (Channel Islands), Granada ITV (North-West England and Isle of Man), London ITV (London weekday), LWT (London weekend), Meridian ITV (South and South-East England), Tyne Tees ITV (North-East England), Ulster Television (Northern Ireland), Wales ITV, Westcountry ITV (South-West and West of England) and Yorkshire ITV (Yorkshire and Lincolnshire)). Subsidiary companies of STV plc hold two of the 15 regional licences: STV Central (Central Scotland) and STV North (North of Scotland).

- introducing a revised set of PSM objectives to support the transition from Public Service Broadcasting ('PSB') to PSM and a new objective to support the creative economy.
- securing the wide availability and prominence for on-demand public service content across all major TV services and platforms.

We recognise that our recommendations, if taken forward by Government, will impact future licensing processes. We plan to work closely with Government as it considers our recommendations.

Our section 229 report

In the meantime, under the existing framework we are required to give our opinion in the s.229 report on the capacity of the current licensees to contribute to the public service purposes² at a commercially sustainable cost.

To determine whether the licences are commercially sustainable, we need to assess the following over the next licence period:

- the value of the current benefits associated with holding a PSB licence; and
- the costs associated with holding a PSB licence over and above the costs that would be incurred without the current PSB obligations (the opportunity costs).

The principal benefits associated with the licences in the next licence period (absent any changes to legislation) will be the right to gifted or reserved DTT capacity and the right to appropriate Electronic Programme Guide prominence for the main Channel 3 and Channel 5 TV channels.

The public service remit for the licensed Channel 3 and Channel 5 services is the provision of a range of high quality and diverse programming. Ofcom sets quotas for certain types of programming and production that the licensees must meet. The current specific obligations associated with the Channel 3 and Channel 5 licences are summarised in the table below:

Licence requirement	Channel 3	Channel 5
News	<ul style="list-style-type: none"> • 365 hours pa (125 in peak) ✓ <ul style="list-style-type: none"> • 60 mins per weekday Breakfast licence 	280 hours pa (20 in peak) ✓
Current affairs	<ul style="list-style-type: none"> • 43 hours pa (35 in peak) • 1 hour per week in Breakfast licence • 78 hours pa (35 in peak) in Border licence ✓	130 hours pa (10 in peak) ✓
Regional programming (news & non-news)	✓ Varies by licence	N/A
Original programming	✓ <ul style="list-style-type: none"> • 65% (85% peak) • 80% in Breakfast licence 	✓ 50% (45% peak)
Proportion & range of programmes by spend and hours made outside M25	✓ <ul style="list-style-type: none"> • 35% outside M25 • N/A in Breakfast licence 	✓ 10% outside M25
25% (of programming) allocated to independent productions	✓	✓

² As defined in Section 264 of the Act.

Draw up, revise and comply with a code of commissioning from independent producers	✓	✓
Ensure approved networking arrangements are in force	✓	Not for Breakfast licence N/A
Subtitling, signing and audio description ('AD')	✓	90% subtitled, 10% AD, 5% signed ✓ 80% subtitled, 10% AD, 5% signed
Days and time of broadcasting	✓	• 7 days/week except 6am-9.25am ³ • Breakfast: 6am-9.25am 7 days/week N/A
Payment of licence fees to Ofcom	✓	✓
Contributions to the National Television Archive	✓	✓
Must offer obligations	✓	✓

The licence also sets out a number of other obligations on the licensees, such as requirements to comply with directions Ofcom sets on advertising minutage, and sponsorship standards.

In our [last assessment in 2013](#), we considered the licences to be commercially sustainable if the value of the benefits exceed the additional costs incurred to deliver the licence obligations, over and above what the licensee would do if it did not hold a PSB licence.

Over the next few months, we will be looking to develop our views on these matters. This letter is intended to seek information to support us in this and in forming our assessment for the s.229 report. Please provide responses to the following questions:

1. Thinking about the existing benefits and obligations over the next licensing period (2025-2034):
 - a. What value would you place on the benefits associated with holding Channel 3 and Channel 5 licences (as applicable)?
 - b. What opportunity cost would you place on existing obligations associated with holding Channel 3 and Channel 5 licences?
 - c. Which of these obligations do you consider impose the greatest opportunity costs? Please identify any obligations not listed in the table above and which you consider impose significant opportunity costs.
 - d. What factors do you consider will have the greatest impact on the value of benefits or the opportunity cost of obligations associated with the Channel 3 and Channel 5 licences during the next licence period?
2. Given current benefits, do you consider the existing obligations Channel and Channel 5 licensees will be commercially sustainable for all or part of the next licence period? Please explain why or why not.

³ The ITV London weekday and weekend licences have different hours. ITV London weekday: 9.25am on Monday to 5.15pm on Friday except between 6.00am and 9.25am each day. ITV London weekend: 5.15pm on Friday to 6.00am on Monday, except between 6.00am and 9.25am.

3. If you consider existing obligations will not be sustainable for all or part of the next licence period, please outline the level of obligations which you consider Channel 3 and Channel 5 licence holders will be able to provide for all or part of the next licence period on a commercially sustainable basis. Please explain why you consider these obligations would be commercially sustainable, set out how they would differ from current obligations and why they would enable the licensee to contribute in the next licence period to the fulfilment of the purposes of public service television broadcasting.

The deadline for submissions, which should be sent via email to commercialrelicensing@ofcom.org.uk, is **14 January 2022**.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Kate Biggs', written in a cursive style.

Kate Biggs