

# **DEVOLVING BROADCASTING, WIRELESS BROADBAND AND SPECTRUM ALLOCATION: Making a Case for Devolution and Subsidiarity**

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**PART ONE: EVIDENCE TO THE CALMAN COMMISSION ON SCOTTISH DEVOLUTION** Submitted by the Institute of Local Television, 2 September 2008

## **SUMMARY (letter of 2 June 2008)**

Thank you for this opportunity to consider the division between reserved and devolved matters. The Commission on Scottish Devolution might give consideration to a tiered approach to communication responsibilities (including broadcasting and wireless broadband) based on the principles of devolution and subsidiarity (or double-devolution): state, nation, local.

Under this principle England, Scotland, Wales and NI would have responsibility for terrestrial communications services for reception and transmission internally. A third less formal local tier supervised by broadcasting/communications trusts - comprised of voluntary bodies - would oversee wireless communications requirements that benefit primarily the region/city local audience and subscribers. Mobile phones and other services without geographic focus would be overseen by a combined representation - transferring responsibility up from local area, through nation to state.

The devolution and subsidiarity of spectrum management follows the introduction of state-wide public service broadcasting and is a spur to drive the as yet incomplete high-speed broadband network. Each nation would license nation scale content services including focusing spectrum use on addressing any real or perceived state-wide deficit. As first priority all remaining spectrum would address local area demands for service.

After state, nation and local public service requirements are fulfilled surplus spectrum might then be leased by the local broadcasting trusts and by nation agencies to incoming and internal commercial services (of a large but not state-universal scale and services without state, nation or local PSB value). These incoming services would be licensed according to demand in the nation and locality. The leasing of spectrum by nations and on behalf of each local area would provide revenue to support nation and local public services.

Satellite services would continue to operate across frontiers although increasingly influenced in what they carried by the greater critical mass afforded nation and local services that this new regulatory model would encourage.

The regulatory structure would conform to European principles for cross border terrestrial and satellite transmission while transforming - in the light of devolution and subsidiarity - our understanding of the scope of public service broadcasting by introducing equity for local civic as well as the devolved nation demands.

## **I INTRODUCTION**

Over the last three decades public service communications have been transformed from their unifying social and political purpose into a safety net for those out of reach of commercial services.

After securing public service coverage for television in the 1970s there were two options for the British Government:

The first - to extend public service broadcasting and communications to address 'national', 'regional' and 'local' 'publics' and to encourage a more accurate and relevant representation of the two lower tiers of civil society, their cultures and governance <sup>1</sup>.

The second - for central control to remain so as to encourage the commercialisation of broadcasting and communications and to defend for commercial benefit the most favourable parts of the public infrastructure. Rather than to protect the public against fragmented and uneven access to communications policy would be turned 180 degrees to defend the commercial operators against local and national interference <sup>2</sup>.

### **The view across Europe**

In Europe the choice to localize regulation has largely been organically achieved and the delegation of broadcasting responsibilities to lower tiers of governance approached as 'common sense'. European cable was introduced throughout the 1980s in partnership with local government. Here contra-deals were struck for local channels to access commercial cable in exchange for cable having access to town and city streets. In Northern Europe it was cable not terrestrial or satellite that became the de facto platform for television distribution (with typically 80% homes using cable for TV by the 1990s). In Germany regulation of local and regional terrestrial TV as well as cable services devolved to the Lande while for Spain delegation of regional services and below was made to each autonomous region. The German Lande receives a small percentage of the license fee to support community and open access media disbursed at the discretion of the area's communication commissions. In Spain a regional tier as well as more local town, city and rural tier of TV broadcasting emerged divided up among community, commercial and municipal stakeholders, giving rise to some 1000 local TV stations in all.

In the UK cable franchises were also initially borough and city in scale but because of weak commercial interest operators were permitted to abandon local area completion targets and to merge franchise areas, to ignore delivering equality of service across their local universe and to aggregate customers across civic boundaries instead.

As broadband was introduced it tended to follow the distribution pattern of cable, to seek customers near digital switches where close proximity offered commercial efficiencies without needing to build new infrastructure. The UK may now have reached the limits of its capacity to deliver higher speeds on the 'twisted copper pair' of the old telephone network. Meanwhile the roll-out of cable and broadband together following a largely unguided commercial path have established a pattern of economic distribution that is to be anticipated for the aggregated wireless digital services that

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<sup>1</sup> Regional TV boundaries do not coincide with civic areas. The relevance of 'regional' news and cultural representation has long been a bone of contention with viewers, who feel they are not represented so much as overwritten by the 'arbitrary' scale of regional TV. (See Part Two below) See also research conducted for the Scottish Government by TNS System Three. *Public Attitudes to Broadcasting*, which can be downloaded from <http://www.scottishbroadcastingcommission.gov.uk/news/publicviews>

<sup>2</sup> A proposal to develop three tiers of public service broadcasting and regulation to coincide with administrative areas was first made in a booklet circulated by the John Wheatley Centre in 1995 titled *Does Scotland need a broadcasting policy?* suggesting devolution of regulation for the next stage for public service TV and radio services, those not offering a UK-wide service.

will follow, those to be introduced with spectrum released from digital switchover.

By a process of stealth the original beneficial objective of the British state gathering together local spectrum for UK-wide distribution of public services, offering an equality of access to common programming, has been transformed into the state's promotion of commercial benefit to operators encouraged to cherry-pick or select the most accessible viewers or subscribers.

## **II SPECTRUM & FUTURE BROADCASTING**

Broadband and cable distribution obscures the once civic scale of the cable franchise area, and companies compete across metropolitan areas to secure the most accessible subscribers, regardless of any consequence of unequal access to services. The Government compromised the civic objectives of cable to secure investment in the 1980s and in a reckless recovery from over-confidence that cable would reach all under private effort undermined cable's distinctive 'local' purpose.

Later regulation in 1990 was realigned to tempt the mostly US operators to invest without the burden of interference from local authorities, removing the requirement for cable to address and reflect each local civic sphere (Rushton, 1994:43-44). By the 1990s in other northern European countries cable had secured almost universal reach among town as well as city households. In turn, those households in the UK without cable in their streets became less likely to benefit from the competition driving faster broadband speeds. Without a regulator addressing constructing service deficit, companies continued to over-supply offering competing services to the same subscribers. Recently the communications regulator Ofcom has found cable broadband availability to be highest in London,

where 61% of households could receive cable broadband services, and lowest in Wales, where less than a quarter of households (23%) were able to [receive]. Availability was higher in urban areas, where over half of all households (52%) could receive cable broadband services, than in rural areas where less than a quarter (23%) could do so (Ofcom, 2007:5.1.1.3).

These findings should not be dismissed as unforeseen but as the outcome of policies designed to help operators secure the more accessible customers, by abandoning those where it was necessary to build new infrastructure (Rushton, 1993:169-170, Rushton, 1994:44, ACTO 22, 2006). Ofcom's recent attempt to further enhance competition, local loop unbundling (LLU), has enabled broadband companies to access BT's digital exchanges, finding enthusiasm to use those serving large numbers of households and businesses, resulting in "LLU availability in urban areas [at] 78% compared to 27% in rural areas" (Ofcom, 2007:5.1.1.4).

Addressing the uneven and impoverished infrastructure arising from light-touch telecoms regulation Kip Meek, formerly of the Ofcom Board and now Chair of the Broadband Stakeholders Group (BSG), reported on 16 April 2007, that

broadband is the critical enabling infrastructure of our modern, knowledge-based economy and is an integral part of many people's lives. Yet ... the UK's current and planned broadband infrastructure may not meet the future needs of the most intensive users and we cannot assume the market will continue to deliver the ever-increasing bandwidth that many content providers and users increasingly expect (Broadband Stakeholders Group, 2007).

In their coverage of the Broadband Stakeholders Group the BBC reported BSG favoured public intervention, "Government should also explore models of how it might get involved in the creation of next generation networks to ensure that all parts

of the UK get treated equally” (BBC, 2007). So now, after twenty years of forced privatisation by regulators up to and including Ofcom, we are invited to return full circle, away from the certainty of Government promises in the 1980s that commercial markets would drive communications infrastructure and its benefits. The belated realisation is that Government intervention will be necessary to secure the communications infrastructure to prevent disadvantaging the more remote economic and cultural communities.

The electromagnetic ‘wireless’ spectrum has one distinct advantage over the ‘built’ infrastructures of cable and wired broadband: its availability has no regard for demographics, geography or commercial intentions. The relatively recent idea that markets offer a better and less wasteful regulation of this spectrum than central Government at Westminster has been promoted largely by Professor Martin Cave (2002). Support for markets as communications regulators for spectrum is presented as offering positive social as well as economic outcomes for national (UK) benefit. “Trading [spectrum] will give firms an incentive to husband the nation’s resources of spectrum and direct it into the most profitable uses” (Cave 2006:6). Yet, leaving the selection of possible consumers to communications suppliers will continue to ensure that some areas receive poorer services than others. This relative poverty remains compounded by poor motivation, the positive disincentive to build out infrastructure, focusing further competition on price for the already largely over-served customers. In particular, it is being proposed by Ofcom that digital spectrum should be configured into commercial packages for auction to encourage operators to access the most easily reached communities, setting aside the less commercially useful and more fragmented spectrum for trade in secondary markets. These are the areas requiring more transmitters and relays to serve viable populations.

Cave concedes that the public have a legitimate interest in retaining access to services that spectrum continues to provide, suggesting the Government’s “key strategic broadcasting goal is that public service broadcasts should be available to everyone, as now, free at the point of consumption” (Cave, 2002:37). Yet Ofcom’s interpretation of public service broadcasting requirements from those receiving public funds, no longer seeks to ensure universal provision. After replacing the ITC in 2003 Ofcom was quick to reassess the scope of public service broadcasting and withdrew the universal obligation to reach all. Instead Ofcom now encourages broadcasters to make their channels “widely available – if content is publicly funded, a large majority of citizens need to be given the chance to watch it” (Ofcom, 2003).

Taken together cable, high-speed broadband and the new digital wireless prospects arising with spectrum released as analogue is switched off will see commercial and publicly funded services being regulated by markets that will significantly over-serve the same populations in some areas, leaving others relatively poorly served. This will allow operators to compete on price and reduce further the need to build out networks beyond the potentially very flexible interpretation of Ofcom’s ‘widely available’ (ACTO 22, 2007). Meanwhile, terrestrial public service television in both analogue and digital forms is expected to reach almost all households (98.5%), but perhaps will only continue to do so until commercial public broadcasters weigh up the impact of heightened competition and consider abandoning the ‘universal’ obligation in favour of the lower more ambiguous achievement of ‘widely available’ set by Ofcom in 2003. The numbers of digital transmitters and relays required to reach 90% of UK households is only 80, compared to 1152 to serve 98.5%. The introduction of terrestrial high definition television (HDTV) may be the tipping-point at which commercial logic excludes universal delivery for the terrestrial HDTV public channels including those receiving public finance. As an alternative to digital terrestrial delivery, satellite offers as good a level of coverage while satellite is far more

spectrum efficient in delivering large scale and pan-national channels. However, satellite is far less effective and very expensive for the delivery of local and regional channels. It is missing local and regional (nation-scale) channels, those able to address smaller geographic civic communities, that are best able to use terrestrial spectrum most efficiently.

As the Government's principal adviser on spectrum trading, Martin Cave did not demonstrate how communications markets would improve spectrum efficiencies over regulation. In linking 'improved efficiency' with commercial incentive, Cave and Ofcom have effectively conflated the objective to achieve an 'efficient use of spectrum' with 'spectrum's commercially efficient use'. A real test of spectrum efficiency in the public interest is whether or not specified and declared public objectives can be achieved by commercial means, following the removal of public intervention, planning and regulation.

Cave writes in his Foreword to the March 2002 *Review of Radio Spectrum Management*, "UK society derives unquantified value from spectrum use by a wide range of services, from defence to broadcasting, whose reasonable demands for spectrum have to be accommodated within any spectrum allocation regime" (Cave 2002:14). Although Cave includes an 'unquantified value' for society in this analysis, he provides no evidence from public stakeholders for this 'reasonable demand' and so it seems a hollow unargued common sense alongside his commercial emphasis associated closely with one interest group, "guided by many of the responses which I have received, particularly from commercial organisations" (Cave 2002:6). The public goals for communications that have been characterised as our common interest in spectrum have, till now, been represented through Government. Cave sets out to recast these interests as best served as indirect benefit achieved through greater commercial profitability and innovation. Cave is extremely confident that commercial dynamics can replace public intervention, suggesting that public service communications will only remain distinctive until market mechanisms mature sufficiently to satisfy all needs, and

the review recognises that there will remain a number of public services for which spectrum is a vital input and for which, in the absence of a fully fledged spectrum market, the current regime of reserving sufficient frequency bands for the delivery of these services should continue through the medium term (Cave, 2002:35).

The potential economic benefit to the public and the nations from an open spectrum commercialisation is that greater public spending will result from larger corporation tax revenues and Treasury receipts made by companies using spectrum to increase their profitability. These indirect benefits are not to be entirely conflated, at least so far as Cave is concerned with the heavily publicised Treasury windfall expected to arise from auctioning spectrum. Cave is in fact only too aware that his motives in writing his review for the Treasury might very easily be misconstrued:

One of my abiding concerns throughout the preparation of the report has been a widespread perception that spectrum charging is simply a device to raise money for the Government from private sector bodies or organisations such as the BBC. Revenue raising has not been an objective which has governed my recommendations (Cave, 2002:9).

Cave assures the reader his principal objective is not economic but to improve spectrum's (technical) efficiency in use, and that a more efficient use of spectrum will itself provide long-term economic advantage for the UK. Cave's principal idea is to encourage commercial flexibility to enable innovation, making a distinction between spectrum's 'technical efficiency' and 'commercial efficiency' as favoured means to

achieve this objective. Yet the evidence of commercially driven cable and broadband does not support commercial packaging and reduced intervention for spectrum. Although Cave distinguishes technical efficiency as the objective Ofcom seem less interested in making this distinction or even in exploring a range of practical possibilities for constructing communications regulation along economic lines. In responding to Ofcom's *Digital Dividend Review*, in March 2007, Ofcom's Spectrum Advisory Board (OSAB) caution the regulator that "UK competitiveness should at least act as a brake on an excessive zeal towards pure spectrum auction approaches" (Ofcom's Spectrum Advisory Board, 2007). If the public benefits of spectrum trade were primarily to become Treasury receipts then there is surely a need for discussion in the nations and economic regions of the UK on the merits of devolving regulation of communications further away from each nation's capacity to intervene in their economic interest. Not least granted regulatory responsibilities those less well advantaged areas would be able to balance spectrum use against broadband deficit and enhance their regional contributions to GDP through increased economic and creative spectrum-use activity, operating to locally sensitive and less large-scale commercially obvious or excluding ways.

For Cave, spectrum becomes over-simplified in being characterized as a raw material for manufacture, "looking forward spectrum is an essential raw material for many of the UK's most promising industries of the future" (Cave, 2002:11). Meanwhile a contrary key perspective from 2002 comes in a paper setting out to inform the Treasury on international spectrum agreements. Martin Kellaway of the National Statistics Office advises the Treasury "by international convention the spectrum is owned by the central Government of each country, and that ownership cannot be transferred" (Kellaway, 2002). In Germany and Spain local broadcasting regulation and licensing of broadcasting has been devolved to regional administrations.

In spite of Kellaway's counsel, the Government through Ofcom have conceded the principle that state control can be transferred, although they have been reluctant to explore administrative delegation of responsibility to the lower tiers of public administration. Having conceded the principle of transfer there seems no reason why the nations and local areas do not counter-claim to take administrative responsibility from central Government – if not title to ownership – and to regulate spectrum to encourage services within their own administrative boundaries.

The state's principle duty of responsibility is to regulate spectrum use at international borders, while a more intuitive narrative explains the public's consent to approving spectrum's accumulation by the state and subsequent monopoly regulation – short of devolution to markets. This narrative explains the historic spectrum plan for the UK as being reliant upon common consent that spectrum would be used to serve mutual public objectives.

The state first annexed wireless for military and defence and later justified its retention of monopoly to prevent a commercial free-for-all for spectrum use (for radio) skewing a shared principle of common access. In this central Government justified monopoly in order to secure an equality of provision through universal delivery. This monopoly embodies a unifying and clear public purpose, as a compact between the state each citizen supporting the accumulation of local instances of spectrum use in order to deliver a mutually beneficial combined national outcome: public service broadcasting as public good.

In proposing to cede spectrum regulation itself to markets and commercial decision this historic bond to give up spectrum for common purpose is broken and, at Cave's

suggestion, Government are to step aside in favour of a supposedly more effective and 'technically efficient', if unproven and untested alternative, the management of spectrum by markets.

The foundation and acceptance of spectrum trading is still far from clear. Speaking during the January 2006 House of Lords Select Committee meeting on the BBC Charter Review Lord Armstrong of Ilminster said: "As I understand ... the [electromagnetic] spectrum is the property of the Government. I believe our access to it is controlled by international agreement. I would be grateful if you could confirm that" (House of Lords, 2006). Cave replied: "I think there still may be some residual uncertainty about precisely to whom the spectrum belongs". After an exchange of letters in the Scottish Parliament Chris Ballance MSP asked Deputy First Minister Nicol Stephen, "... who, if anyone, owns the electro-magnetic spectrum in Scotland, as distinct from who manages it?" Nicol Stephen replied: "The [Scottish] Executive's understanding is that there is no defined ownership of the electro-magnetic spectrum" (Scottish Parliament, 2006). Stephen's stresses that it is Ofcom's role to 'manage spectrum'. Can that management be handed over to commercial trade and if so what is being traded?

The House of Lords (House of Lords, 2006) invited one of Professor Cave's colleagues Dr David Cleevely to contribute evidence on the proposals to create a spectrum market. In contrast to Cave, for Cleevely spectrum is not 'scarce' but a significantly under-exploited resource, for broadcasters and for other potential users of spectrum. Like Cave however Cleevely is far from convincing in providing the Lords with evidence that technical efficiency gains follow from market regulation, instead he urges the Lords to accept that people (other than Government) "might take the right kind of decisions in order for innovation to take place".

Here Cave and Cleevely are united in suggesting – no matter what spectrum is, whether scarce or abundant - central Government has failed in its responsibility to safeguard spectrum and to encourage sufficient innovation, inhibiting good management and effective creative use. Yet neither witness provides this Committee with any evidence that better decision making will result in a more technically efficient use of spectrum resulting from commercial freedom to regulate use by trade.

In returning to consider spectrum management in 2006, although Cave continues to characterise a commercial engagement with spectrum as the means to achieve spectrum's technical efficiency he emphasises that it is "technically efficient spectrum use [that] commends itself as a self-explanatory benefit. Indeed, technical efficiency may rationally count as the leading factor in spectrum allocation decisions" (Cave, 2006:4).

This is an important point. Cave is characterizing commercial means as a preferred candidate to central Government to secure technically efficient spectrum use. It is evident that 'technically efficient spectrum' is the priority and taken together Cave's view is merely an hypothesis that technical efficiencies will result from a commercial interest in retaining minimal surplus of spectrum as 'raw material' on the balance sheet. It is far from evident that there is a commercial incentive to dispose of inexpensive spectrum and if expensive not to retain that spectrum until the market improved. It is hard to see why spectrum left-over in low population areas would not be abandoned, not traded at all and since not part of a public plan there would be no cross-subsidy of revenue from easy to reach audiences or subscribers redistributed to support services to those less accessible.

Just as it is possible to imagine under optimum market conditions commercial

efficiency encouraging technically efficient use of spectrum it is also possible to imagine in stagnant markets and for spectrum accessible to only a few no link that would ensure or guarantee commercial regulation will drive spectrum's technically efficient use. There is simply no evidence that commercial incentives will secure technical efficiency – or deliver *the leading factor in spectrum allocation decisions*.

If central Government regulation is as Cave suggest poor and that spectrum lies unused this is not a weakness shared by public administrations. Some administrations in the UK have not had control of spectrum or its regulation. Certainly central Government succeeded in securing the universal outcome and having achieved that has – perhaps – lost sight of what to do next, forgetting that in securing 'local spectrum' for 'national purpose' devolution to determine use closer to transmission and reception is one possibility. Cave, Government and Ofcom do not provide any evidence to suggest devolved regulation to a more localised administration would be less or more efficient than commercial operators trading unwanted spectrum under market conditions to ensure efficient use.

One of the objections to Ofcom in particular as an evidence based researcher is that their it is their instinct rather than evidence that seems too easily to coincide with the interests of operators, encouraging a simple treatment of spectrum as if it were a raw material or property and indifference to the priority 'technical efficiency'. By suggesting spectrum to be 'concrete' it is easier to imagine the transfer of spectrum itself to represent the transfer of rights to use, and to involve the mechanisms of by auction and market as if spectrum were a raw material or material good. Yet as Kellaway suggests above the ability to transfer spectrum from government is clear from an international standpoint, as echoed by the Lords in questioning Cave and Cleevely (also above). There is a very strong case for suggesting that thinking of spectrum as a material good at all amounts to a category mistake, because spectrum is not a material thing.

As David Goldberg explained in a discussion arranged by the Cross-party Culture and Media Group of the Scottish Parliament,

think of the [spectrum] issue in terms of action (verb) not substance (noun), think in terms of spectrum use; there's no Platonic ideal spectrum lurking like the shadow in the cave (!). Spectrum classification is a human construct; it doesn't exist in nature. Radio communication is people communicating using emitters and receivers: the activity of using emitters modulating at a specific frequency and receivers tuned to receive the emission to enable/ facilitate communication (Goldberg, 2007).

Goldberg's understanding of spectrum as 'action' rather than as 'substance' seems far more consistent with Cave's priority to assess 'technical efficiency' in spectrum use. As an action of transmitting and receiving spectrum use is identified as a *conjoint use* measured in its deployment. And yet the economic or commercial case for spectrum regulation – the idea that spectrum might be 'owned' and then 'transferred' – requires Ofcom to separate the 'transmitting' from the 'receiving' responsibilities in the activity of spectrum use. This serves to discourage an understanding of identifiable or evidenced technical efficiencies based on the experience of use (that is upon particular actions of transmission and reception).

Without any doubt spectrum value for society and commerce lies in its use, but its successful use requires reception. For broadcasting for each transmission spectrum is transmitted at one point and received at many. Spectrum use involves not just the transmission but the successful reception of the signal. If a broadcast signal is transmitted and not received at all or by a small percentage of those able to receive it



then this spectrum is being used wastefully. Furthermore this particular transmission excludes other simultaneous uses in that area and location – instances of transmission and reception where a greater percentage require reception of an alternative use. As well as securing spectrum's technically efficient use Ofcom's claim is that it is an evidence-based regulator. To establish technical efficiency of spectrum (here for broadcasting) Ofcom needs to apply transparently a common measurement of assessment.

For television the TV transmitters and the installed base of domestic aerials together with the TVs as receivers comprise the transmitting and receiving elements required for transmission and reception. The operator involved in transmission and the viewers engaged in reception are necessary partners in assessing whether or not spectrum is being efficiently used in its broadcast role.

Given Ofcom's preference to focus upon the interests of the operator (transmitter) what is particularly interesting is that the economic investment in broadcasting favours the invested capital of viewers and listeners as the major stakeholders, not the operators. Householders buy and install their own TV receiving equipment but through the requirement to hold a TV licence provide annual investment in building and maintaining the broadcast transmitters, most recently in replacing the analogue transmission network in preparation for digital switchover <sup>3</sup>.

The license fee makes a substantial on-going contribution to the network of transmitters and towers required for broadcasting. Yet by Ofcom's sleight of hand in objectifying spectrum and by exclusively favouring the operator as spectrum's principal stakeholder the public's role as viewer-investors – which is critical in determining spectrum's efficiency and paying for transmission - is overlooked.

A simple equation expresses technically efficient spectrum use as the difference between the number of television viewers able to receive a channel and the number actually watching or recording that channel. This satisfies the objective to provide evidence of efficient and wasteful spectrum use, or Broadcast Spectrum Efficiency (BSE). BSE equals the product of Numbers watching (Nw) and Minutes (tv) of viewing over the product of Number of licensees in the transmission area (NI) and Minutes of broadcast time (tb).

$$BSE = \frac{Nw \times tv}{NI \times tb}$$

It is this formula, not Cave's economic opinion or Ofcom's specious idea that efficient use of spectrum can be controlled entirely by the operator or supply side, that provides the measurement for spectrum's technically efficient use. A television signal that is transmitted but not watched at all is the most inefficient use of spectrum and the efficiency of use increases as a percentage of those able to watch are found to be watching. BARB provides an indicative figure for each national television channel's technically effective use of spectrum on a weekly basis <sup>4</sup>.

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<sup>3</sup> We might conservatively assume 25m x £200 TV sets/aerials as capital investment in reception plus percentage of the £139.50 annual TV licence fee spent on transmission upgrades. Currently c.70% households are receiving analogue or digital Freeview on first or second TV sets with their TV signals conveyed using the transmitters and relays of the national network.

<sup>4</sup> Broadcaster's Audience Research Board Ltd. <http://www.barb.co.uk/>

As the priority for Cave this formula provides a measurement of spectrum's technical efficiency in broadcasting use, ensuring that independent assessment can be made of the extent of waste and satisfaction in each instance of spectrum's use.

Several digital terrestrial TV channels are rarely watched by more than 1% of possible viewers. Many of these are commercially efficient operations – and on Ofcom's blinkered view these commercial services are spectrum efficient because they are commercially efficient.

If these channels were found not to be spectrum efficient because spectrum use rather than 'ownership' was measured then - as both Cave and the 2003 Communications Act require - Ofcom would need to withdraw their licenses and offer the spectrum to services that offered larger audiences or technically more efficient use.

### **Devolution and subsidiarity**

Local, regional and, more recently, the devolved governments have started to consider how spectrum might be used for local services tailored to the economic needs and cultural aspirations of those in their administrative areas. This consideration involves exploring legislation and regulation to first imagine and then consolidate local access, to tackle economic, democratic and cultural inequalities that have become reinforced by commercial services being introduced under state patronage.

For the Scottish parliamentary elections of 3 May 2007, the electorate voted in favour of providing for local and community media and/or broadcasting devolution from the digital dividend. Viewer studies conducted or commissioned by the regulator and others since the 1950s have shown strong demand for localised public service television as a 'third tier' of broadcasting (Holden, Pearmain and ORC International, 2006). The public's objective remains for local TV be seen on TV, at least until broadband capacity and use is equally available for all (MORI, 2005:36) by when local TV should serve all communities (Sancho, 2002:30).

Lord Sandy Bruce-Lockhart, Chairman of the Local Government Association wrote (12 June 2007) to Lord Currie, Chairman of Ofcom:

Television is still the greatest source of information flow. I believe that it is essential for television to have a stronger element of regional and particularly local news and programmes. Local means areas of governance such as cities and shires. ... The changes in Government policy and in the Local Government Bill are very much about emphasising the importance of 'place', the fostering of a sense of local identity and belonging. But they are also about needing to hold local decision makers to account locally, through local Select Committees, local council leaders, and those that head up the NHS, Police and other local public institutions. Again this requires public awareness to create interest. Each of these challenges would be greatly advanced by local television (Williams, 2007).

On 19th September 2006 Alex Neil MSP, Chair of the Culture and Enterprise Committee of the Scottish Parliament, also wrote to Lord Currie, Chair of Ofcom:

I am writing to you to request that no decisions are made on the use of broadcast spectrum that exclude the introduction of Local TV channels with DTT roll out to reach all households in Scotland. Furthermore, spectrum should not be allocated or regulated so as to restrict or inhibit the introduction in future of new independent public channels from and for Scotland.

On 2nd April 2008 Alex Salmond, First Minister of Scotland, addressed by letter the 3rd Scottish Local TV Forum meeting in Aberdeen:

We need to ensure that broadcasting in Scotland reflects the richness of our communities ... Local television can have a part to play in expanding the cultural content broadcasting in Scotland has to offer. It also has the potential to be a great mechanism for enhancing civic engagement and strengthening the communities it serves. Already I have requested that Ofcom ensure that spectrum is available for local television, to allow for its development in light of Minister's decisions after considering the report of the Scottish Broadcasting Commission.

### III CONCLUSION: Devolution and Subsidiarity

Based on the principles of devolution and subsidiarity (or double devolution) each tier of Government should retain responsibility for communications that achieve public goals at their tier of administration enabling a more equitable commercial and public communications that is democratically accountable across state, nation and local area.

FIGURE ONE: Indicative distribution of regulatory functions

<b>UK services</b>	<b>Nation services (Scotland)</b>	<b>Local services</b>
<b>Wireless</b> PSB broadcasting BBC, ITV, C4 & 5 BBC radio UK commercial radio radio	Nation PSB broadcasting BBC Scotland (?) Gaelic BBC Radio Scotland Large-scale commercial radio	Local PSB broadcasting Local public service TV Small-scale local radio Community radio
<b>Wired</b>	Cable  Telephony & Broadband networks Nation services Joint nations working-group	Cable (local must carry channels)  Local services
Satellite services subject to EU and State requirements.		
Cross border issues to be brokered on a state-nation basis		
State responsibilities would be those clearly identified as state-wide and cross-state or services across international borders		
Combined nation responsibilities would oversee cross-nation responsibilities – equal representation from each nation regulatory body		
Local responsibilities would be service and channel provision issues for local civic scale areas – to ensure spectrum and wired provisions not delivering on a state- or nation-wide service addressed local needs		

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## **DEVOLVING BROADCASTING, WIRELESS BROADBAND AND SPECTRUM ALLOCATION: Making a Case for Devolution and Subsidiarity**

**PART TWO: EVIDENCE TO THE CALMAN COMMISSION ON SCOTTISH DEVOLUTION** Submitted by the Institute of Local Television, 17 February 2009

### **Preface**

Part One of Evidence to the Calman Commission on Scottish Devolution submitted on 2 September 2008 explored the application of the principles of devolution and subsidiarity to broadcasting and communications.

This paper backgrounds the present crises in regional TV and its future supply of PSB.

We explore the missing component of local public service television and address the demand from the public for an appropriate scale of local TV rather than regional TV and outline how this demand – especially strong in Scotland – has been subordinated to a combination of central regulation and large scale commercial interest.

This second paper could usefully be read as ‘a case study’ for local regulation and accountability of services by engaging those within a TV signal’s catchment area. In a very loose way it is a sister paper to the Scottish Broadcasting Commission’s proposals for a Scottish Network for the nation.

I believe it is helpful to outline what has been missing in the UK’s communications as a result of setting aside the public’s view in favour of central monopoly over communications regulation and legislation.

Although firmly grounded in the Scottish experience, from the point of view of subsidiarity these proposals touch on the same dislocation of regulation experienced within each nation.

### **Introduction**

Local public service television is identified with cultural, political and economic ambitions to better represent and reflect social discourse within an identified local public sphere. The most appropriate scale of local public television should invite social participation and involvement in the operation and content of the channel, with geographical proximity encouraging citizen reflections on attachment to place, making possible contributions to cultural expression and the fulfillment of local political engagement. Negt and Kluge (1972: 47) suggest that this ‘public sphere’ “describes the social organisation by means of public communication of authentic experiences and needs that are relevant to a specific group or category of individuals, and transforms the individual experiences into one of the group”. In this light, the author does not consider local and community media in isolation but as part of social process “as an integral part of the individual’s active orientation towards the physical and social environment” (Hollander and Stappers, 1992: 22).

After 1996 ‘local public service television’ became the more inclusive term to characterise forms of ‘local TV’ and ‘community TV’. Agreement followed a debate at the Annual General Meeting of the Community Radio Association (now Community

Media Association (CMA)), held in Edinburgh in 1996. For radio, 'local' commercial forms were already established while 'community radio' was aspiring to deliver a third smaller and more civic tier. For television a 'local' scale had not been assigned a national plan and 'public service' represented common ground between smaller commercial as well as community campaigners. However, for national and regional broadcasters and communications regulators 'local TV' meant only 'regional television', in spite of this not being a scale that viewers found particularly comfortable or relevant (Rushton, 1993: xiii). The 1996 CMA agreement set out to help coordinate responses to the Independent Television Commission's proposed introduction of a single type of local television license, to be known by its acronym 'RSL', standing for 'restricted services license'. For a few years the CMA provided the secretariat for a community-commercial association that became known as LiTN (Local independent Television Network). Following the award of RSL licenses the 2003 Communications Act permitted local authorities to hold broadcasting licenses in England, though not in Scotland, encouraging local public service broadcasting to include municipal as well as community and commercial stakeholders. In anticipation of digital spectrum capable of use by local TV the CMA has provided the focus for the UK-wide organization United for Local Television to represent local public service television interests in offering universal access to local TV on Freeview.

Without a statutory right in law for each citizen to access the airwaves (or cable) the UK is out of step with what Nick Jankowski (1991: 85) has characterised as the ideal community service type, or purest form of community broadcasting, the 'open' or 'access' channel established widely throughout Germany and in degrees of variation in the Benelux countries. Some would argue that over the last decade the Internet has offered a better platform for individual peer to peer, rather than social access, benefiting from the absence of regulation rather than positive or favourable legislation.

The modeling and construction of demand for a more local political and cultural social broadcasting space has found the UK Government to be defensive and wary, while established national broadcasters have been steadfast in countering demands for a coherent local frequency plan on a national scale that would represent a potentially more coherent network of local public spheres. The narrative outlined here reflects a combination of theoretical and practical interventions, from more than twenty years, providing research that has sought to inform as well as to advocate 'local TV debate', celebrating in practical ways the content and achievement of local television experience, reflecting its positive contribution to democratic debate as a form of local public service television. Hollander and Stappers (1992: 19) suggest "community communication is then a form of public communication". The author suggests that without 'representation' in its democratic as well as reflective meaning there is no public sphere evident, because these two forms of representation remain mutual and interdependent.

The scale of a 'local public service television' might best enclose a known and publicly accepted social geography, encircling an area where the viewer is comfortable to intervene as citizen or cultural practitioner, an area sufficiently well defined to encourage civil discourse and political consensus, constructing and reconstructing cultural reality in order to reflect personal ambition in social goals. Local public service television's civic contribution is founded on its close

proximity to [its] audience: their viewers in general are not only able to walk in and take an active part in the process of communication; this collaboration is actually required, since local TV is about the reality of its viewers' immediate surroundings. Certainly, viewers may identify emotionally with what they see, but in this case their emotion is constructive and contributes to social

activation. Reflection is encouraged by examination of real, dynamic, reality, rather than the immobilized sham of infotainment and the reality show. For local TV, true audience participation is a guarantee of quantitative and qualitative success. (Campoy, 2006: 5)

Without a written constitution in the UK the long-running dialogue on 'local public service television' has provided some of that missing 'constitutional' debate through identification and characterization of demand for an 'identity enhancing' television space within public broadcasting and communications. The arguments for 'local public service television' have had to steer between three strands of state involvement: legislation, regulation and engineering. These three deserve greater public scrutiny and engagement to broaden and contribute opinions to influence the future delivery of public service communications and to question the motivation of the state's continued monopoly, and desire to further alienate the scope of public conversation and intervention in communications by regulating spectrum use through markets.

Inevitably the history addresses a lack of willingness to allow local television representations of the public's view, the growing deficit in regional television's 'public purpose' arising from, and sustained by, the arbitrary scale of television's regions that in turn are being set aside in favour of further national programming. The established broadcasters have resisted public demand to provide a smaller more relevant news and information service, commandeering technical innovations to introduce further large-scale commercial channels to exclude that more innovative and social local public purpose. From the start of independent commercial television in the mid 1950s through to the present day a distinctive civic purpose for public broadcasting has been refused.

The 'local public sphere' has been made invisible in central Government's complicity in transforming the public as local citizens into viewers satisfied as global consumers. The BBC has lost a once coherent unifying social and public purpose, failing to reflect the emergence - post war and post cold war - of a demand for a more local identity in the nations, second-guessing the state's response to its own fragmentation so that by default and almost as a caricature of a public role the BBC has become 'state television lite' (Rushton, 1993: xv).

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## Local Identity

Before the UK's commercial television channels began broadcasting in the mid 1950s, the Independent Television Authority (ITA) considered the likely political damage of not providing regional services focused on those large communities that regarded themselves as distinctive. In considering Scotland the ITA explored a separate service for Glasgow and Edinburgh, noting in a Confidential Memo

we may as well face here the question whether the Edinburgh station would support a programme contractor of its own. I think we must certainly assume that it would. If it cannot, then it would mean our development would never cover areas of 1.5 million people or less and this would limit us to 8 stations in all. Such a proposition seems entirely untenable especially as in the USA almost all communities with over two million inhabitants support three stations or more (ITA, 1955:paper/55/51).

A separate Edinburgh and Glasgow service “would have the advantage of taking account of the existence of two separate communities, would allow us to accommodate two contractors instead of one and would give better coverage”. However, less than a year later short-listed proposals indicate competition for a single station, with Roy Thomson, the Canadian broadcaster and owner of The Scotsman newspaper, a Mr Gordon Kyle and The Daily Express in competition. Of these three the ITA notes that it is only Roy Thomson who “claims to have the necessary finance” (ITA, 1955:paper/55/51:2).

A year later, with Thomson's proposal accepted, the ITA Director General Sir Robert Fraser receives a late indication from Thomson that he does not intend to pay the transmission fee that had been agreed with applicants. To avoid restarting the selection process Fraser writes to Thomson in despair

I wish to goodness you had let me know at a much earlier stage during our series of discussions about Scotland that you would not in fact feel able to pay an annual rental of more than £190,000 ... I am now having to hold up our orders for equipment for Scotland ... We plainly cannot sign a contract for Scotland at a figure significantly below that mentioned to the twenty or so applicants without giving each one of them a chance to apply again. (ITA, 1956:Paper 28 (56:2))

Against his own advice, Fraser then proposes to Thomson that the ITA announce that a “sufficient reason” for the cause of the delay to agree rental terms should be attributed to “the national economic situation, and the central need for cuts in capital expenditure outside the direct field of industrial production” (ITA, 1956:Paper 28 (56:2)). Although the regulator had reconciled a commercial rationale with public support for two channels as negotiations proceed to their climax based on operator preference for a single channel, the regulator confides in the contractor to cloud the public purpose of regulation, providing an early indication of the collapse of public purpose in later cable regulation (see Chapter Three: Accommodating Local TV in Regulation, Legislation and Engineering).

Twenty years after ITV's birth, the public were advising the Independent Broadcasting Authority that ‘regional news’ was proving remote and often irrelevant. In responses from three out of four UK regions, sampled in October 1976, “30%, to 40% of viewers say that the news magazine deals too much with local news in other areas [in the TV region]” (IBA, 1976:para4.6). The IBA concluded “what is attractive is material which reinforces personal identity, the sight of people or places known or recognised, and historical or cultural explorations of the local background to personal



identity” (IBA, 1976:para4.6). With this demand sufficiently evident the regulator concluded that when new engineering opportunities for television transmission arise, what would be “welcomed would be social and cultural material of an identity-reflecting and enhancing nature” (IBA, 1976:para4.8).

In providing evidence to the Committee on the Future of Broadcasting (1973:para121), the IBA had earlier noted the technical feasibility “for separate local interest programmes to be transmitted from a station, or stations, covering parts of the [ITV] contract area. They are a possible development of ITV’s regional structure”. A year later, the Crawford Committee Report agreed that “separate news programmes ... could make a valuable contribution to meeting the demands of viewers for a more localised service”, adding that “an interest in regional programme variations grows in importance, as viewers become more selective and more aware of local loyalties and interests ... there would be an advantage in the number of areas into which the United Kingdom is divided by the BBC and the IBA for regional programme purposes being increased” (Crawford, 1974:36).

In 1977 the IBA published *Attitudes Towards Localised Television Services* finding Edinburgh still “more local in its inhabitant’s experience and feelings” than some other places surveyed. Drawing its conclusions from inquiries made throughout four regions, the study found that, “viewers do say that they would like to see TV coverage of places which are closer to where they live ... more so than they wish to see coverage of more distant places ... served by the same TV company” and that “the interest in nearby places emerges principally from an interest in the immediate locality”. For the Edinburgh area they were more explicit, finding “there is considerable implied appetite for more local news, in that from 55% to 65% of viewers say the ITV news magazine doesn’t cover enough interesting local news” (IBA, 1977).

A common criticism of Birmingham’s Central News in 1984, “was a feeling that the programme concentrated too much on controversial or superficial padding, sometimes at the expense of more serious or worthy items, and sometimes to allow presenters to push their own personalities” (Kerr, 1984b:4). Here news presentation, rather than news content, was favourably received as “‘friendly’, ‘relaxed’ and ‘human’” (Kerr, 1984b:4). With ‘entertaining’ cropping up frequently in responses Kerr was puzzled by this “unusual description for a local news programme” (Kerr, 1984b:4). Viewers in central Scotland were also concerned with “presentation, which many viewers considered ‘amateurish’, ‘flippant’ and ‘superficial’”. While here Kerr found that “items, particularly those of a serious nature, were rushed, cut short, or allowed too little time, and there was for some viewers a lack of depth and detail. Some of the existing material is considered boring and repetitive” (Kerr, 1984a:3).

The former journalist Andrew Boyd suggests, “for a [news] story to have impact, it has to be relevant. For news to be relevant, it has to have proximity to an audience” (Boyd, 1993:1). Yet with current regional transmission news that viewers find relevant to themselves is missing for most of the broadcast time, denied or obscured by the discomfiting compromise of regional scale. In justification, Boyd characterises the news editor’s role as arbitrating between relevant information and entertainment, needing to balance viewer ratings in competition with other sources of news and entertainment.

The IBA/ITC *Mapping Regional Views* study (1990) found news about a person’s own locality or district as “of primary importance [for] most people (88%)”. In this study it becomes very clear that regional television occupies, on something akin to military terms, its transmission territory and broadcast airtime, blatantly confusing

what is felt to be 'local' with what can be passed off as 'regional' (if called local), overlooking the evident and experienced local identification in the public's comments in *Mapping Regional Views* (Rushton, 1993:116-132). A decade after the IBA and Crawford Committee had recommended a more localised service, television engineering offered opportunities to introduce new channels, including local TV on both fifth and sixth channel spectrum (identified in 1988) as well as a reassessment of the appropriate scale of commercial regional coverage in licence renewal rounds. And yet, in spite of the longstanding recommendations pressing the local case, Government favoured intruding greater channel choice with further large-scale commercial channels.

The IBA's studies from this period strongly doubt that the Government's preference for 'channel choice' reflects public support or will actually result in improved viewer satisfaction. In 1988 the IBA found there was no link between "an increase in availability [of channels and] greater appreciation" (Wober and Kilpatrick, 1988:9). For while greater channel availability increased programme supply "people may yet find the end result no more satisfying". More channels served to heighten competition for viewer attention, undermining channel complementarity, where programmes are transmitted to avoid clashes between similar programme types. Yet there seemed no turning back.

It is not possible to enforce a policy of complementarity where new channels or sets of channels compete outside of a given control body; so any unregulated addition of new channels is likely to increase the amount of 'redundant availability' across TV viewing" (Wober and Kilpatrick, 1988:9).

As multi-channel has extended to terrestrial transmission there are still only a handful of channels regularly watched. Spectrum wastage in terrestrial transmission of multi-choice increases proportionately, and massively, with each channel added (ref Annex One).

Television programmes differ from other consumer goods: if they are not watched they are lost to the viewer, or not 'consumed' and Wober and Kilpatrick conclude that, when measured using "the same 'instrument' before and after a change [from complementarity to multi-channel choice] ... people adapt to the array of what is available so 'well', that they evince no greater satisfaction with greater than with less programme availability" (Wober and Kilpatrick, 1988:17-18). Reducing spectrum wastage has been a longstanding regulatory ambition. Yet, far from addressing wastage, multi-channel choice actually fosters a flagrant abuse of spectrum under the guise of Government response to consumer demand. The choices offered are not those consumer makes and, in terms of spectrum efficiency, multiple but similar minority interest channels exclude delivery of greater diversity or variety by terrestrial means. With multi-channel firmly in place by 1995, the Shadow Minister for Broadcasting, Graham Allen MP, reflected upon the realisation that Wober and Kilpatrick had predicted,

yet again there is a gaping hole in the Government's proposals to provide local services rather than more of the same. In Bruce Springsteen's words, "two hundred channels and nothing to watch." If the Government became involved and took action, the alternative could be a burst of creative variety in local programming. The need for such variety will not be by the satellite television companies' introducing many dozens of channels - possibly more than 100. They do not wish to enter that market, and we shall have to look elsewhere for local provision. (Hansard, 1995)

In 1989, to better understand and anticipate the 'public's view' the IBA conducted a detailed study of public opinion to provide a benchmark against which "to assess the

future developments, [and provide] an aid to future planning, and a route for viewers' and listeners' opinions to be heard" (Svennevig, 1989:5). This study included a nationwide survey of public attitudes, opinions and knowledge about the state of broadcasting and its "likely future" (Svennevig, 1989:5). Although the majority of viewers felt there was quite a lot of television regulation, this regulation was not 'too much' and "overall the majority of six in ten viewers felt the amount of regulation was about right, while one in four felt there was too little" (Svennevig, 1989:7). Across all demographic groups, 79% favoured the continuing supervision or regulation of broadcasting (Svennevig, 1989:9). Less than one in five viewers believed these new channels would offer improved quality, with 39% believing they were likely to be of worse quality than current channels (Svennevig, 1989:12). And yet, for the majority of viewers, "quality is paramount, and given the choice in principle between quality and quantity, opt for the former rather than the latter. Nine in ten viewers want better quality programmes, rather than more channels" (Svennevig, 1989:13).

In 1989 the IBA set out to assess the expectation that television satisfaction would improve with the multi-channel television proposals, concluding "what is noticeable ... is the absence of large scale special pleading [among viewer's questioned] for more of those programme types which are often claimed as representing the shape of things to come – quiz shows, sport, soap operas" (Svennevig, 1989:2). Svennevig felt that introducing further channels was unlikely to have a positive outcome, although in spite of public demand and research evidence battle lines were being drawn with, on the

one side, the Government's White Paper [*Broadcasting in the '90s*, which] states that the most effective way to give viewers choice is to increase the number of channels available. Against this is the argument which states that maximum choice is achieved through scheduling diversity and range on fewer channels (Svennevig 1989:5).

The Broadcast Bill of 1995, and the anticipation of digital terrestrial television, provided an opportunity for parliamentary debate on public priorities, with the opposition shadow Broadcasting Minister, Graham Allen MP, concerned that cable and multi-channel choice had not increased opportunity, promising that with a change of government digital would not be squandered.

History, unfortunately, will judge that this Government have consistently failed to encourage local television, especially through the cable era ... The big network players - the BBC and the independent television companies - should see local television as an opportunity and not as a threat to their existence. We will explore ways in which to empower the ITC to ensure a strong, local element in a modern, diverse and democratic media. We will ensure that the digital revolution can spawn many local channels. That, again, will be a suitable complement to Labour's devolution of power to the localities, regions and nations of the United Kingdom. Sadly, this Government's broadcasting policy has meant that television has been degraded (Hansard, 1995).

The ITC's final study on regional television, before handing its regulatory duties over to Ofcom, was conducted in 2002. Titled *Pride of Place* Jane Sancho explored possible replacement of regional ITV programming, should the commercial operator decide "it can't afford to produce regional programmes so it stops showing them" (Sancho, 2002:29). Sancho finds support for replacing the regional service with a "network of local television services (RSLs) broadcast[ing] local programmes across the country" (Sancho 2002:29). The study's jury in the north of England had access to the local RSL, Channel M. This jury valued its local service for encouraging local expression, while adding that the absence of a local channel in some areas "was unacceptable, as was the fact that local news might not be provided because the

costs would be prohibitive” (Sancho, 2002:30). A study from BBC Scotland, *Journalism Review 2003*, evidences the continued demand in Scotland, some fifty years after TV’s public and commercial regions were established, for a local television news bulletin, wanting “5–10 minutes of local television news within the 6-7pm news hour on BBC1 (81% interested, only 8% not interested)” (BBC, 2003:13). Yet in spite of acknowledging the need to address this deficit at the time, BBC Scotland’s considered response explores how to satisfy the demand for local TV ‘as TV’ by examining instead how BBC Scotland “might provide a stronger regional news service considering the options for all services – radio, television and online” (Peat, 2006:13).

A study in 2006, commissioned by Ofcom from Holden Pearmain and ORC International (2006), found television viewers highly critical of the quality of many of the channels introduced in the 1990s by Ofcom’s predecessor, the ITC. This study’s respondents found the commercial channels wasteful of spectrum and of poor quality. Holden Pearmain and ORC International found the public antagonistic towards Ofcom’s proposal to encourage markets to regulate the use of spectrum freed up after digital switchover. Local news and local information are found to be the most valued services that the public would like to see introduced on freed up spectrum (Holden Pearmain and ORC International, 2006:5.27). At every opportunity the respondents’ advocate a more interventionist stance from the Government, in order to maintain shared public objectives through spectrum use, while seeking reassurances from Ofcom that universal coverage will prevail for the new digital TV services. Holden Pearmain and ORC International afford a glimpse of the void that lies between public aspiration and regulatory imposition, finding viewers wanting greater vigilance and not weaker, lighter or more ethereal regulation, requiring Ofcom to supervise television operators the viewer does not trust to provide either quality or equal provision of wanted public services. Perhaps the most damning “common opinion [was] that as the airwaves are a national resource, some control should remain with the Government. If this does not happen then what was once available as a ‘public’ resource may be used for services that do not benefit society” (Holden Pearmain and ORC International, 2006:8.16).

Fifty years after the introduction of that single central Scotland commercial TV service Ofcom justifies replacing regional programmes throughout the UK with more cheaply made national and acquired programmes based on ‘opportunity cost’ (Foster, Egan and Simon, 2004:20). That is, rather than replace a regional TV service with a wanted and demanded more local service, to satisfy viewer interests in ways consistent with public assessment and viable commercial scales, the alternative favoured on an economic model presses public service further into a UK or abstracted commercial moulds. The conceit, that the author explores in Chapter One, is that spectrum is to be made free of public accountability, to pass into private hands through auctions, markets and secondary trading on the basis of an economic opinion, without evidence of better results and at odds with public consent. The market research consultations have clearly shown spectrum markets as, at best, a contentious idea and provide sufficient evidence to suggest overwhelming rejection should the public be more wholeheartedly consulted.

There was unanimous agreement in the groups that some form of intervention was necessary to ensure that services that are valuable to society are made available to the maximum number of people. Respondents felt that the private sector alone, being motivated by profit, would not necessarily deliver services that are valuable to society (Holden Pearmain and ORC International, 2006: 8.11).

Without public intervention, future communication markets will serve best only those

capable of being easily reached by a commercially viable package of spectrum uses, because “consumer interests arise following the establishment of a market, in which individual consumers make decisions about the acquisition and/or use of goods and services which are provided by suppliers” (Ofcom, 2006:A7.11). In communication markets the consumer is not individually able to increase supply through personal demand because what influences the construction, scale and viability of markets is the location of consumers close together and close to the source(s) of distribution. Ofcom supports the creation of markets that enable consumption subject to accessible markets. For terrestrial television communications, for cable and high-speed broadband, these markets are built around the reach of transmitters and the bandwidth of cable and location of digital switches. It is network capacity rather than demand from consumers as individuals that determines commercial efficiency in delivering communications services to households on a local as well as regional scale.

In the course of the last fifty years a repeated if moderate voice has been recorded reminding Government, regulator and broadcaster that the public require broadcast supply to fit the contours of civil society, not to have civil society conform to the contours of commercially satisfactory economics. As the author suggests, the evidence of the public’s view has been ignored, even wilfully distorted, pushed aside to favour commercial ‘cherry-picking’ to deliver a supposedly greater choice through multi-channel broadcasting which, for many, offers no real choice at all. In 1989, the IBA argued that multi-channel choice would not necessarily enable greater choice but would certainly increase spectrum wastage, providing redundant programming in a heightened competition as generally less watched channels chase each other for viewer attention. Multi-channel choice has undermined public purpose (on commercial television) and, as suggested in Chapter One, now seems set to threaten universal reach and the potential more localised innovations in public service communications the public has prioritised (Sancho, 2002:30, Holden Pearmain and ORC International, 2006:8.16).

Rather than respond to this evidence by tailoring services to address demand, Ofcom has encouraged ITV to withdraw from regional (non-news) public service programming during digital switchover, to enable the commercial public service to compete on commercial terms with channels not required to provide universal coverage or satisfy public purpose. Where does this leave ITV’s public obligations? Ofcom offer no evidence that heightened competition will improve the quality or extend the purpose of commercial or public service television. In withdrawing from public service obligations ITV are not giving up public service spectrum (with access to 98.5% of homes) or their prominent position on electronic programme guides. Instead of building upon Sancho’s (2002) study for the ITC, and introducing local TV to replace the regional loss across all areas of the country, Ofcom refuse to extend the restricted services license for analogue local TV into digital transmission and to progress proposals for a national local frequency plan. The regulator disapproves of a comprehensive universal local public TV service, using add/drop technology (see Chapter Three), suggesting local TV will need to compete at auction for local spectrum. And yet universal access to local television as a public service remains the public’s requirement from Ofcom evident in studies by MORI (2005) and Holden Pearmain and ORC International (2006). While, in Scotland, four years have now passed since the BBC’s *Journalism Review 2003* found overwhelming public support for 5-10 minutes of local news in the 6-7pm TV news slot.

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