

- 4.8 In fact, the BBC simply asked viewers ‘motherhood and apple pie’ questions such as:<sup>15</sup>

*“Can you tell me how much you approve or disapprove of the BBC’s plans to launch BBC THREE?”*

and

*“If BBC THREE were to launch would this make you more or less interested in having digital television?”*

- 4.9 Once again, viewers were **not** asked whether, in light of monetary costs and opportunity costs, they actually supported the introduction of BBC 3. Responses can be presumed only to have been made on the presumption that it would be “free”, not only at the point of use but effectively by not requiring any increase in the licence fee, and without mentioning the opportunity cost in not pursuing alternative possibilities for licence fee payers.
- 4.10 Nor does the research provide any credible evidence to support the claim that BBC 3 will help drive digital take-up (and thus help to facilitate analogue switch-off). It revealed that some people might be more interested in digital TV as a result of BBC 3, but said nothing about whether it would actually make a decisive difference to their intentions. As discussed below, a majority of the target audience are already multi-channel television viewers – and a significant proportion of the analogue terrestrial-only minority already intend to purchase digital.

## **5 WHETHER THE VALUE TO THE PUBLIC OF THE SERVICE IS PROPORTIONATE TO THE LIKELY IMPACT ON THE MARKET**

- 5.1 Assessing whether the value to the public of BBC 3 is proportionate to the likely impact on the market effectively involves a cost-benefit analysis. Such a cost-benefit analysis, however, should not be carried out unless it is first concluded that there is a requirement for the proposed service. To paraphrase the Davies Panel:<sup>16</sup>

---

<sup>15</sup> NOP survey questions on behalf of the BBC.

<sup>16</sup> See 3.8 above.

*'it is impossible to argue for [BBC 3] unless market failure can be shown'*

- 5.2 The requirement for BBC should be judged first by reference to a market failure test. BSkyB does not consider that such a test could be satisfied in respect of BBC 3.
- 5.3 Even if this were not the case, BSkyB considers that the Secretary of State could not come to the conclusion that the value to the public of the television services set out in the BBC 3 proposal is proportionate to the likely impact on the market.
- 5.4 The Guidelines indicate that when assessing the value to the public of a proposed new service the Secretary of State will consider the following<sup>17</sup>:
- whether the BBC has fulfilled its obligation to consult licence fee payers on proposals to make any material change to the nature of the Home Services;
  - whether the BBC has published detailed results from its consultation;
  - the nature and coverage of commercial services of a similar nature;
  - the likely impact of the proposed commercial services already in the market and on potential future services; and
  - the distinctiveness (in programming or content) of the proposed BBC service from those provided by other broadcasters.

**Whether the BBC has fulfilled its obligation to consult licence fee payers;  
Whether the BBC has published detailed results from its consultation**

- 5.5 The failure of the BBC (once again) to consult licence fee payers in a meaningful way (effectively ignoring the deficiencies and key criticisms of its previous new services consultations as noted by MORI, by other respondents and by the Secretary of State) is addressed in Section 4 above. The BBC has failed to demonstrate in a rigorous or credible fashion that the licence fee paying public would value BBC 3.

**The nature and coverage of commercial services of a similar nature**

- 5.6 The BBC claims in its proposal for BBC 3 that:

---

<sup>17</sup> Paragraph 3.1.2 of the Secretary of State's Guidelines for the Approval of BBC Public Services.

"No other channel covers a full range of genres for this age group [25-34 year olds]." <sup>18</sup>

5.7 As discussed under 'distinctiveness' below, the proportion of BBC 3's schedule dedicated to genres other than entertainment actually appears quite small. However, even if no other *single* channel aimed exclusively at this age group has the same mix of genres, the fact is that over a *range* of services 25-34 year olds are already well served. It is *because* the programming offered over the range of channels in multi-channels homes serves this audience so well that:

- More than 62 per cent of 25-34 year olds are *already* multi-channel cable, satellite or digital terrestrial viewers<sup>19</sup>; and
- Of the remaining analogue terrestrial-only 25-34 year olds, over 40 per cent intend to purchase digital – the majority of these within the next 12 months.<sup>20</sup>

Indeed, there is some suspicion that it is because they are so well served that the BBC wishes to launch its own offering to compete in the market place.

5.8 In considering this criterion, therefore, the Secretary of State should take account of the nature and coverage of television services **as a whole**, as well as individual channels. In other words, the test applied by the Secretary of State should not be confined to ascertaining only whether there are individual commercial services with characteristics similar to that proposed for the BBC's new services.

5.9 Whilst most viewers have their favourite services, it is important to understand that multi-channel television consists of a large range of distinctive services. This allows viewers to make up their own viewing schedule by selecting individual programmes from a range of services. As the former Director of BBC Television, Mark Thomson, noted<sup>21</sup>:

---

<sup>18</sup> Page 2, *Executive Summary, BBC Proposal*, September 2001.

<sup>19</sup> Source: RSMB January 2002

<sup>20</sup> Source: Sky Tracker Sept-Nov 2001.

<sup>21</sup> Speech given by Mark Thomson, Director of BBC Television, Banff International Television Festival, 12 June 2000.

*'Greater choice, which many public broadcasters argued was unnecessary or even against the public interest, is being seized by viewers with enthusiasm and appreciation.'*

*'Modern audiences are sophisticated and empowered and you patronise them at your peril.'*

*'...the whole point of the EPG is to enable viewers to assemble their own [programme] mix.'*

*'You can study the charts of fifteen second audience movements and see them go the moment they realize that a given programme doesn't meet their mood or expectation.'*

5.10 Thus, content similar to that proposed by the BBC for inclusion in its new services is likely to be found across a number of existing – and forthcoming – multi-channel television services. As the Secretary of State is aware, new services are being added regularly to the digital satellite platform. Over the last three years numerous new services have been introduced as content providers seek to differentiate their offerings. There is, therefore, a real risk that new BBC services will, unless they are clearly resolving a market failure, pre-empt the development of new commercial services.

5.11 It should also be recognised that even in multi-channel homes, 25-34 year olds continue to view the output of BBC 1 and BBC 2 (as well as ITV, Channel 4 and Channel 5). As the graph in Annex 1 confirms, BBC 1 and BBC 2 have not suffered any significant share loss among 25-34 year olds in multi-channel homes in the last five years – their performance has been relatively static. Nor have the BBC's previously launched digital channels (BBC Choice, BBC Knowledge and BBC News 24) added more than minimally to the BBC's total share of this audience. A BBC channel dedicated to covering *'a full range of genres for this age group'* is not needed in order to secure viewing – if adequate programming on BBC 1 and BBC 2 continues to meet the needs and aspirations of this audience.

#### **The likely impact of the proposed services on commercial services in the market and on potential future services**

5.12 The launch of new BBC licence fee funded services will impact adversely on the economics of commercial services with similar content. Last year Nickelodeon UK submitted to DCMS a detailed economic model which

demonstrated the impact on advertising and subscription revenues, and package displacement, of entry by BBC channels. The model reflects the impacts on other genres and channels as well as the children's example (where the net present value of the commercial children's sector would be reduced to zero losing £250 million in funds available for investment in programming).

- 5.13 As commercial broadcasters noted in a joint representation to the Secretary of State following her September 2001 approval of three new licence fee funded BBC television services:

*"the Government has failed to define what degree of market damage to the commercial sector it believes to be acceptable in order to provide new publicly funded broadcasting services and to our knowledge ignored the rigorous modelling provided...to measure both market impact and distinctiveness. We have not been told by DCMS that our evidence for market damage was inadequate or unconvincing."*<sup>22</sup>

- 5.14 BSkyB maintains that the Government should address this matter. What degree of market damage does it believe is acceptable in order to provide new publicly funded broadcasting services? And in what way was the previous evidence on market damage submitted inadequate or unconvincing?
- 5.15 Even where the launch of a BBC channel does not have the effect of causing a commercial service to become unviable, it will make the recovery of investment more difficult and will delay the ability of commercial broadcasters to invest more in original, high quality content. This in turn will lead to reduced choice, reduced quality and reduced innovation.
- 5.16 BSkyB's own experience of the impact of BBC News 24 on Sky News substantiates the observations that publicly funded free to air services can have a material adverse effect on existing commercial services. As BSkyB previously informed the DCMS, the launch of BBC News 24 had a material impact on both the subscriber revenues and advertising revenue achieved by Sky News.<sup>23</sup>

---

<sup>22</sup> Letter and Memorandum to the Secretary of State for Culture, Media and Sport on behalf of Artsworld, BSkyB, Commercial Radio Companies Association, Discovery Networks Europe, Fox Kids, Discovery Networks Europe, Nickelodeon UK, The History Channel, Performance, Telewest and Turner Broadcasting Systems International, 24 September 2001.

<sup>23</sup> In its March 2001 submission, BSkyB noted that should the Secretary of State require further information on the financial impact of BBC News 24 on Sky News, BSkyB would be happy to provide it on a confidential basis. DCMS never sought such additional information before, or since, approving new licence fee funded channels.

5.17 In B SkyB's view, it is self-evident that the launch of BBC 3 will have a detrimental effect on commercial services targeting the same age group. People have a finite amount of time devoted to watching television each week, and the BBC is unlikely to increase consumption of its services among the target audience without taking viewers away from commercial channels. They can only do this by offering programming that is equally, if not more, attractive than what is already available. (Hence the determination even in the revised BBC 3 proposal to devote the majority of resources and peak hours to entertainment, in order to compete with the commercial channels on their own ground, e.g. by poaching established stars like Dom Joly from Channel 4). This will undermine the business strategy of commercial competitors' services and may cause some to become economically unviable. Where this leads to their exit from the market, a market failure will have been created by the Secretary of State's approval of the BBC services.

**The distinctiveness (in programming or content) of the proposed BBC services from those provided by other broadcasters**

5.18 The requirement that BBC 3 be distinct from those provided by other broadcasters is crucial. A key test for the approval of BBC 3 must be that it does not replicate services that are already provided by the commercial sector, or that are likely to be provided by the commercial sector in future. Such replication could manifest itself in a number of ways including content, target audiences and scheduling.

5.19 As already indicated, the introduction of publicly funded channels providing similar content to that provided by commercial channels will always have a detrimental economic effect on commercial channels which depend for their success on subscriber and advertising revenue. The only circumstance in which this effect may be acceptable is where the publicly funded services are truly distinctive and thus can add value to what the market will provide. In practice, therefore, if new BBC services are not distinct from those services already offered there is, by definition, no market failure and public funding for these channels should not be approved.

5.20 In order for the Secretary of State to be able to approve BBC 3, the BBC must be required to demonstrate that there is market failure – the Davies Panel's own touchstone for public service broadcasting – and that the provision of this new service is the best way to correct this. If the BBC is not able to

demonstrate to the satisfaction of the Secretary of State that there is (and is likely to be enduring) market failure, then BBC 3 should not be approved.

5.21 The fact that BBC 3 is free to air is **not** an appropriate measure of distinction. The relevant question is not whether something is a free to air channel with a particular focus but whether it is distinct from all other available services including commercial services. If free to air was a valid measure of distinction it would allow the BBC to justify services that replicated any existing commercial service (e.g. premium sports and movie channels), as long as the BBC version was "free to air".

5.22 As previously noted, the BBC claim that:<sup>24</sup>

*"No other channel covers a full range of genres for this age group [25-34 year olds]."*

and that

*"No other channel offers around 90% UK programming and around 80% new programming."*

5.23 The first of these claims has already been addressed (see paragraphs 5.6-5.11). The '*full genres*' distinction is largely irrelevant to the '*sophisticated and empowered*' audiences who the BBC acknowledge use multi-channel television '*to assemble their own [programme] mix*', and who will change channels '*the moment...that a given programme doesn't meet their mood or expectations*'.

5.24 The '*fullness*' of the BBC 3 genre mix appears overstated in any event. As the BBC 3 proposal states, only around 15 per cent of the hours broadcast (1900-0400) will comprise news, current affairs, education, music and the arts.<sup>25</sup> News programming appears to account for just 3.6 per cent of the schedule (including the hourly bulletin of one minute and the 15-minute weekday show). The commitments to other genres amount to even less, with music accounting for 1.5 per cent (50 hours a year), education accounting for 0.9 per cent (30 hours a year) and current affairs accounting for 0.6 per cent (30 half hours a year). The proposal identifies no specific commitment to Factual or Ethnic programming, leaving the channel with around 93 per cent of its output

---

<sup>24</sup> Page 2, *Executive Summary, BBC Proposal*, September 2001.

<sup>25</sup> Page 3, BBC 3 proposal published by DCMS.

unaccounted for and the possibility that pure entertainment programming could comprise up to 85 per cent of the hours broadcast.

5.25 With regard to the proportion of new UK programming on BBC 3, it is self-evident that any new digital channel benefiting from a Government-granted programme budget of around £100 million a year could offer such programming as a high percentage of its output. Again, however, specific commitments are lacking in the BBC 3 proposal, and it is anticipated that a significant proportion of the budget will be used for popular entertainment programming to compete with commercial broadcasters, rather than to address market failure.

5.26 Whilst the BBC 3 proposal states:

*"No other channel has the same commitments to promoting new talent with risk taking and innovative programming...covering every nation and region and every culture and race... [and] offering a high level of online and interactive support."*

Few details emerge (e.g. in terms of programme budgets and broadcast hours) to support these commitments. There is, for instance, no suggestion that even the minimal commitments to programming covering education, current affairs, the arts, every region and every culture and race etc will be scheduled in peak-time, when the highest volume of viewing for 25-34 year olds occurs (between 2000-2200)

5.27 The Secretary of State should take into account the growth of new and original UK programmes from commercial services as a whole, and the likely future contribution of these and other new market entrants. Many commercial broadcasters seek to increase the proportion of new and original UK content on their services. As discussed above, however, the competitive distortions created by BBC 3 could affect the recovery of investment by commercial channels, leading to a reduction in investment in original, high quality content.

## **6 WHETHER THE SERVICE WILL BE UNIVERSALLY ACCESSIBLE WITHIN A REASONABLE PERIOD OF TIME TO THOSE WITH APPROPRIATE RECEIVERS AND FREE AT THE POINT OF USE**

6.1 In its submissions to DCMS on previous BBC new services proposals, BSkyB stated that it considers this criterion not to offer adequate guidance to the

Secretary of State in deciding whether to approve new BBC services. The requirement that the service be “universally accessible” ceases to have meaning when it is limited by reference to those with appropriate receivers. In practice narrowing the scope of the meaning of universal access in this way means that a service could be “universally accessible” if only a single viewer in the UK has the appropriate receiving equipment and is able to receive the service. This is an extraordinary interpretation of the concept, particularly when the services in question would be funded by the universal licence fee.

## 7 VALUE FOR MONEY

7.1 The BBC provides little or no information as to why it considers BBC 3 to be value for money, and the internal approval of matters by the BBC Governors cannot be a proxy for an objective assessment of the substantive merits of the proposal (particularly in view of the deficiencies of the BBC’s consultation exercise).

7.2 The BBC 3 proposal states that:<sup>26</sup>

*“Although often perceived as one of the more affluent segments of the population, the facts suggest that a significant proportion of 25-34 year olds earn low wages relative to their new-found responsibilities, resulting in low personal disposable incomes...*

*“As a result, stark choices arise in allocating their spending, particularly in ‘nice to have’ categories such as leisure and media. 62% of this age group claims to ‘spend my money more carefully than I used to’”.*

7.3 Yet it is notable that the target audience (25-34 year olds) was not consulted as to its views on BBC 3’s value for money. As discussed in Section 4 above, the responses of those surveyed can be presumed to have been made on the assumption that BBC 3 would be “free”, not only at the point of use but effectively by not requiring any increase in the licence fee, and without mentioning the opportunity cost in not pursuing alternative possibilities.

---

<sup>26</sup> BBC 3 Proposal, page 6.

- 7.4 The budget proposed for BBC 3 is huge – nearly £100 million a year. The BBC makes no attempt to explain why this would be justified and why this would amount to “value” relative to other potential uses of the money.
- 7.5 If driving digital take-up was a key objective for a new BBC service<sup>27</sup>, it is hard to see why the BBC would target 25-34 year olds. This audience already has higher multi-channel television penetration than any other adult age group – with a significant proportion of the minority of non-adopters *already* intending to purchase digital. Resources targeted at those regarded as the core ‘digital refusniks’, e.g. those over 55 (the least multi-channelled), would be far more logical than the creation of a service designed for a polar opposite group.
- 7.6 The second graph in Annex 1 shows multi-channel television penetration of adults by age.
- 7.7 The question of value for money, of course, applies to all of the BBC’s new digital channels. Annex 2 gives recent share and reach figures for the BBC’s existing ‘new’ digital services, BBC Choice, BBC Knowledge and BBC News 24. Among other things, this shows that:
- The BBC’s new digital channels – in aggregate – continue to account for less than 1 per cent of all UK television viewing and less than 2 per cent of television viewing across multi-channel cable, satellite and digital terrestrial homes.<sup>28</sup>
  - On average, fewer than 2 in 10 viewers in multi-channel homes watch any one of the BBC’s new digital channels for more than 3 consecutive minutes per week.<sup>29</sup>
  - Sky News continues to attract a higher share of viewing than the BBC’s dedicated news channel across multi-channel cable, satellite and digital terrestrial home – despite the fact that BBC News 24 reaches more than 1.2 million additional homes through Government-granted DTT capacity that is unavailable to Sky News.<sup>30</sup>

---

<sup>27</sup> It is *not* one of the criteria laid down in the Secretary of State’s Guidelines for the approval of new licence fee funded services.

<sup>28</sup> Source: BARB Jan 1 – 30 Dec 2001.

<sup>29</sup> Source: BARB 12 weeks ending 2 December 2001.

<sup>30</sup> Source: BARB Jan 1 – 30 Dec 2001.

- In Sky Digital homes, where Sky News and BBC News 24 are equally available, Sky News' share of viewing is nearly three times that of BBC News 24, despite the constant cross promotion afforded to BBC News 24 across the BBC's (universal) analogue and digital television and radio services.<sup>31</sup>

7.8 In her letter of 13 September 2001 to the BBC Chairman, the Secretary of State wrote:

*"I agree that it would be right to replace BBC Choice and Knowledge, which have been approved since the Charter and Agreement, but have not proved successful. The programming has been disappointing and neither service has attracted a significant audience share."* (emphasis added)

7.9 It is not clear whether BBC 3 would need to achieve a particular level of audience share (if the channel were to be approved) in order considered "successful" as a successor to BBC Choice by the Secretary of State. However, it is notable that only BBC 1 repeats and children's programming (which will transfer to the BBC's new children's channels) have generated significant viewership amongst 25-34 year olds on BBC Choice.

7.10 Nor is it clear that if the BBC were to pursue a more classic public service broadcasting genre mix on BBC 3 that the Government may wish to see expanded (news, current affairs, education etc), the target audience would watch this output. For instance, the BBC states how few 25-34 year olds watch Channel 4 and Channel 5 news – without revealing how many it expects to watch news on BBC 3. Indeed, there is some suspicion that the BBC believes that public service content deemed more 'worthy' would not attract its target audience – hence its reluctance to sign up to any meaningful commitments, even in the revised proposal.

7.11 B SkyB's view is that the value for money offered by BBC 3 (as with the BBC's existing digital services), particularly in a competitive multi-channel environment, is likely to be very poor.

---

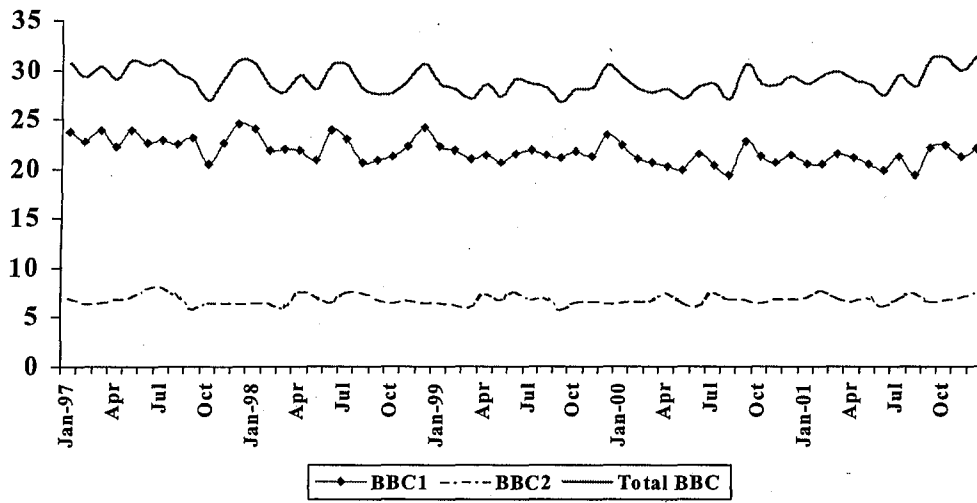
<sup>31</sup> Source: BARB Jan 1 – 30 Dec 2001.

## **8 THE BBC'S ADDITIONAL JUSTIFICATION FOR ITS PROPOSED NEW SERVICES**

- 8.1 As discussed elsewhere in this response, there is no credible evidence to support the claim that BBC 3 will drive digital take-up (and thus help to facilitate analogue switch-off). The BBC's research revealed that some people might be more interested in digital TV as a result of BBC 3, but said nothing about whether it would actually make a decisive difference to their intentions. Nor did the research consider the question of how many homes would decide **not** to switch to digital if popular commercial alternative services find it uneconomic to continue in the face of unfair competition from BBC 3.
- 8.2 The target audience already has higher multi-channel television penetration than any other adult age group – with a significant proportion of the minority of non-adopters *already* intending to purchase digital. Resources targeted at those regarded as the core 'digital refuseniks', e.g. those over 55, would be far more logical than the creation of a service designed for 25-34 year olds. Annex 1 shows multi-channel penetration of adults by age.

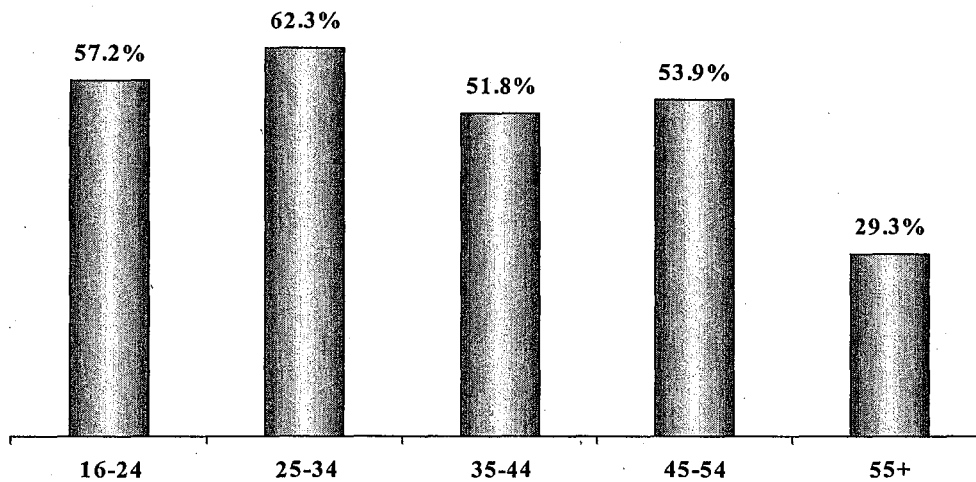
**BSkyB**  
**January 2002**

## BBC Share in Multichannel Homes Adults Jan '97 - Dec '01



Source: BARB \ SPC Jan 97 - Dec 01

## Multichannel Penetration Adults by Age



Source: RSMB January 02

## BBC DIGITAL CHANNELS AND SKY NEWS VIEWING FIGURES

### 1. Channel Shares for the BBC Digital Channels:

Jan – Dec 2001	All Homes	Multi-channel Homes
BBC News 24	0.22%	0.46%
BBC Knowledge	0.04%	0.08%
BBC Choice	0.56%	1.20%
<b>Total BBC Digital</b>	<b>0.82%</b>	<b>1.74%</b>

Source: BARB Jan 1 –30 Dec 2001

### 2. Average Audience 000's for the BBC Digital Channels

Jan – Dec 2001	Average Audience
BBC News 24	18
BBC Knowledge	3
BBC Choice	47
<b>Total BBC Digital</b>	<b>68</b>

Source: BARB Jan 1 –30 Dec 2001 Multi-channel homes

### 3. Reach (Individuals) for the BBC Digital Channels

12 weeks ending Dec 2 <sup>nd</sup> 2001			
		Average Daily Reach	Average Weekly Reach
BBC News 24	Reach %	4.5	14.7
	000's	1321	4316
BBC Knowledge	Reach %	0.7	3.4
	000's	208	1009
BBC Choice	Reach %	5.2	17.4
	000's	1541	5114

Source: BARB 12 w/e 2nd Dec 2001 Multi-channel homes

### 4. Channel Shares for Sky News Versus BBC News 24

Jan – Dec 2001	All Homes	Multi-channel Homes	Sky Digital Homes
BBC News 24	0.22%	0.46%	0.32%
Sky News	0.32%	0.69%	0.94%

Source: BARB Jan 1 –30 Dec 2001